

procedures have been fully implemented, and that such procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with Baird in the future.

4. Baird's general counsel or chief executive officer will certify on an annual basis that Baird and Mr. Gaspar have complied with the conditions to the requested order.

5. The certifications and procedures required by the conditions to the requested order will be maintained as part of the records of Baird and will be available for inspection by the Commission and its staff at any reasonable time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-31915 Filed 12-27-01; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25323; 812-12348]

AXA Premier Funds Trust, et al.; Notice of Application

December 20, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under: (a) Section 6(c) of the Investment Company Act of 1940 (the "Act") requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e-1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between a broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a

principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3-1 under the Act.

APPLICANTS: AXA Premier Funds Trust, AXA Premier VIP Trust, EQ Advisors Trust (collectively, the "Trusts") and The Equitable Life Assurance Society of the United States ("Equitable" or the "Manager").

FILING DATES: The application was filed on December 6, 2000, and amended on December 19, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, 1290 Avenue of the Americas, New York, NY 10104.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942-0634, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Trusts, each a Delaware business trust, are registered under the Act as open-end management investment companies and are comprised of multiple series (each series of the Trusts, a "Fund"). Shares of the Funds of EQ Advisors Trust and AXA Premier VIP Trust are only offered for sale to insurance companies to fund variable insurance products and employee investment plans.

2. The Manager is registered under the Investment Advisers Act of 1940

("Advisers Act") and serves as investment adviser to each of the Funds. The assets of certain Funds ("Multi-Advised Funds") are allocated by the Manager among two or more subadvisers ("Subadvisers"). Each Subadviser is registered under the Advisers Act or is exempt from registration. Each Subadviser has discretion to purchase and sell securities for a discrete portion of a Multi-Advised Fund's assets. The Manager pays each Subadviser a fee out of the advisory fee received by the Manager from the Multi-Advised Fund. Equitable or a Subadviser controlling, controlled by, or under common control with Equitable (an "Equitable Affiliate") may directly advise a discrete portion of a Multi-Advised Fund.

3. Applicants request relief to permit: (a) A broker-dealer registered under the Securities Exchange Act of 1934 that serves as a Subadviser or is an affiliated person of a Subadviser (the broker-dealer, an "Affiliated broker-Dealer" the Subadviser, and "Affiliated Subadviser") to engage in principal transactions with a discrete portion of a Multi-Advised Fund that is advised by another Subadviser that is not an affiliated person of the Affiliated Broker-Dealer or Affiliated Subadviser (the discrete portion, an "Unaffiliated Portion," the Subadviser, and "Unaffiliated Subadviser"); (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion, and the Unaffiliated Portion to utilize such brokerage services, without complying with rule 17e-1(b) and (d) under the Act; (c) an Unaffiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser, or a person of which an Affiliated Subadviser is an affiliated person ("Affiliated Underwriter"); (d) a discrete portion of the Multi-Advised Fund advised by an Affiliated Subadviser ("Affiliated Portion") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule would not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion; and (e) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities

(“Securities Affiliate”), subject to the limits in rule 12d3-1 under the Act.¹

4. Applicants request that the exemptive relief apply to the Trusts and any existing or future registered open-end management investment company or series thereof that is (a) advised by Equitable or an Equitable Affiliate and (b) advised by more than one Subadviser. The relief also would apply to any existing or future entity that serves as an Affiliated Subadviser, Affiliated Broker-Dealer, or Affiliated Underwriter to a Multi-Advised Fund. Any investment company that currently intends to rely on the order is named as an applicant. Any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

Applicants' Legal Analysis

A. Principal Transactions Between an Unaffiliated Portion and an Affiliated Broker-Dealer

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of, promotor of, or principal underwriter for such company, or any affiliated person of an affiliated person, promoter, or principal underwriter (“second-tier affiliate”). Section 2(a)(3)(E) of the Act defines an affiliated person to be any investment adviser of an investment company, and section 2(a)(3)(C) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with such person. Applicants state that an Affiliated Subadviser would be an affiliated person of a Multi-Advised Fund, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and thus a second-tier affiliate of a Multi-Advised Fund, including the Unaffiliated Portion. Accordingly, applicants state that any principal transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Advised Fund with an Affiliated Broker-Dealer are subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another discrete portion of the same Multi-Advised Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter of the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund.

3. Section 17(b) of the Act authorizes the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants contend that section 17(a) is intended to prevent persons who have the power to control an investment company from using that power to the person's own pecuniary advantage. Applicants assert that when the person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further

submit that the Manager's power to dismiss Subadvisers or to change the portion of a Multi-Advised Fund allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its discrete portion of a Multi-Advised Fund.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of a Multi-Advised Fund. Each Subadviser is responsible for making independent investment and brokerage allocation decisions. Applicants represent that the Manager will not dictate brokerage allocation or investment decisions to any Multi-Advised Fund advised by a Subadviser nor will it have the contractual right to do so, except with respect to any portion of a Multi-Advised Fund that the Manager may advise directly. Applicants contend that, in managing a discrete portion of a Multi-Advised Fund, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of the Multi-Advised Fund, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion in accordance with the investment objectives and related investment policies of the Multi-Advised Fund as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions increases the likelihood of a Multi-Advised Fund achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer

1. Section 17(d)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section unless otherwise permitted by rule 17e-1 under the Act. Rule 17e-1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the “usual and customary broker's

¹ The terms “Unaffiliated Subadviser,” “Subadviser” and “Unaffiliated Portion” include Equitable or an Equitable Affiliate and the discrete portion of a Multi-Advised Fund directly advised by Equitable or an Equitable Affiliate, respectively, provided that Equitable or the Equitable Affiliate manages its portion of the Multi-Advised Fund independently of the portions managed by the other Subadvisers to the Multi-Advised Fund, and Equitable or the Equitable Affiliate does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Advised Fund. [FN3, p.6]

commission" for purposes of section 17(d)(2). Rule 17e-1(b) requires the investment company's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to adopt certain procedures and to determine at least quarterly that all transactions effected in reliance on the rule compiled with the procedures. Rule 17e-1(d) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e-1.

2. As discussed above, applicants state that an Affiliated Broker-Dealer is either an affiliated person (as Subadviser to another discrete portion of a Multi-Advised Fund) or a second-tier affiliate of an Unaffiliated Portion and thus subject to section 17(e). Applicants request an exemption under section 6(c) from section 17(e) and rule 17e-1 to the extent necessary to permit an Unaffiliated Portion to pay brokerage compensation to an Affiliated Broker-Dealer acting as broker in the ordinary course of business in connection with the sale of securities to or by such Unaffiliated Portion, without complying with the requirements of rule 17e-1(b) and (d). The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another discrete portion of the same Multi-Advised Fund. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter of the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund.

3. Applicants believe that the proposal brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair as required by rule 17e-1(a). Applicants also note that an Unaffiliated Subadviser has a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

C. Purchases of Securities From Offerings With Affiliated Underwriters

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser or employee of the company, or an affiliated person of any of these persons. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f-3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f-3 limits the securities purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser, although under contract to manage only a discrete portion of a Multi-Advised Fund, is considered an investment adviser to the entire Multi-Advised Fund. As a result, applicants believe that all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principle underwriter of which is an Affiliated Underwriter would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Underwriter. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Advised Fund. The requested relief would not be available if the Affiliated Underwriter (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of (a) Equitable; (b) the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion of the Multi-Advised Fund; (c) any principal underwriter or promoter to the Multi-Advised Fund; or (d) any officer, trustee or employee of the Multi-Advised Fund. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence

of an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, provided that the purchase will be in accordance with the conditions of rule 10f-3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Advised Funds because a decision by an Unaffiliated Subadviser to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Underwriter, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among Subadvisers, and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

D. Purchases of Securities Issued by Securities Affiliates

1. Section 12(d)(3) of the Act, in relevant part, generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Rule 12d3-1 under the Act exempts certain transactions from the prohibitions of section 12(d)(3) if specified conditions are met. One of these conditions, paragraph (c) of rule 12d3-1, generally provides that the exemption provided by the rule is not available when the issuer of the securities is the investment company's investment adviser, promoter, or principal underwriter, or an affiliated person of the investment company's investment adviser, promoter, or principal underwriter.

2. Applicants state that each Subadviser is considered to be an affiliated person of an entire Multi-Advised Fund. Thus, an Unaffiliated Portion may not purchase securities of a Securities Affiliate in reliance on rule 12d3-1 because of paragraph (c). Applicants request relief under section 6(c) from section 12(d)(3) to permit an Unaffiliated Portion of a Multi-Advised

Fund to acquire securities of a Securities Affiliate within the limits of rule 12d3-1. The requested exemption would apply only where a Securities Affiliate is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion within the meaning of Rule 12d3-1(c) solely because an Affiliated Adviser is the Adviser to another portion of the same Multi-Advised Fund.

3. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3-1(c) was designed to address because of the nature of the affiliation between a Securities Affiliate and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment decisions for the assets allocated to its portion of the Multi-Advised Fund. Further, applicants submit that prohibiting the Unaffiliated Portions from purchasing securities issued by Securities Affiliates could harm the interests of a Fund's shareholders by preventing the Unaffiliated Subadviser from achieving optimal investment results.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Multi-Advised Fund relying on the requested order will be advised by an Affiliated Subadviser and at least one Unaffiliated Subadviser and will be operated in the manner described in the application.

2. No Affiliated Subadviser, Affiliated Broker-Dealer, Securities Affiliate or Affiliated Underwriter (except by virtue of serving as Subadviser to a discrete portion of a Multi-Advised Fund) will be an affiliated person or a second-tier affiliate of: (a) Equitable or any Equitable Affiliate; (b) any Unaffiliated Subadviser; (c) any principal underwriter or promoter of a Multi-Advised Fund; or (d) any officer, trustee or employee of a Multi-Advised Fund.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions.

4. No Affiliated Subadviser will participate in any arrangement whereby the amount of its subadvisory fees will be affected by the investment performance of an Unaffiliated Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of any underwriting or selling syndicate a principal underwriter of which is an Affiliated Underwriter, the conditions of

rule 10f-3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by Unaffiliated Portions.

6. With respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate, the conditions of rule 12d3-1 will be satisfied except for paragraph (c) to the extent such paragraph is applicable solely because such issuer is an Affiliated Adviser or an affiliated person of an Affiliated Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-31916 Filed 12-27-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934, Release No. 45179/December 20, 2001]

Securities Industry Association 1401 Eye Street, NW., Washington, DC 20005-2225; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

The Securities and Exchange Commission ("Commission") is extending its temporary Order issued December 10, 1999¹ under Section 17(e) of the Securities Exchange Act of 1934 ("Exchange Act") exempting broker-dealers from Exchange Act Section 17(e)(1)(B) and Rule 17a-5(c). These sections require a broker-dealer to send each of its customers semi-annually its balance sheet with appropriate footnotes prepared in accordance with generally accepted accounting principles ("GAAP") and a footnote disclosing the firm's net capital and required net capital. To take advantage of the exemption, a broker-dealer must semi-annually send the net capital footnote to its customers, must send its balance sheet and appropriate footnotes to customers upon request via a toll-free number, and must place its balance sheet and appropriate footnotes on its Web site.

The Commission's temporary Order established a pilot program which expires on December 31, 2001. During the pilot program, a broker-dealer taking advantage of the exemption was required, among other things, to report to the Commission the number of times its balance sheet was viewed on its Web site and the number of requests for

paper copies received via its toll-free number. In a letter dated December 11, 2001, the Securities Industry Association ("SIA") stated that it supported an extension of the exemption.

The Commission has determined, on the basis of information set forth in the SIA's letter and information reported by broker-dealers taking advantage of the exemption, that extending the exemption for one year is consistent with the public interest and the protection of investors. The Commission intends to propose a rule amendment shortly which would make the relief permanent.

A broker-dealer exempted under this Order must comply with each of the following requirements:

(1) The broker-dealer semi-annually sends its customers, at the times it otherwise would have sent its customers its balance sheet in accordance with Rule 17a-5(c), a statement which includes: (a) The amount of the broker-dealer's net capital and its required net capital in accordance with Rule 15c3-1, (b) to the extent required under Rule 17a-5(c)(2)(ii), a description of the effect on the broker-dealer's net capital and required net capital of subsidiaries consolidated pursuant to Appendix C of Rule 15c3-1 (jointly the "Net Capital Disclosure"), and (c) any statements otherwise required by Rule 17a-5(c)(2)(iii)-(iv).²

(2) The above statement is given prominence in the materials sent to its customers and includes an appropriate caption stating that customers may obtain the broker-dealer's balance sheet (in the case of the annual balance sheet, audited and with the auditor's certification) at no cost, by accessing the broker-dealer's Web site or calling the broker-dealer's stated toll-free number. The statement must provide the specific Internet Universal Research Locator (URL) at which the broker-dealer's balance sheet is located.

(3) The broker-dealer publishes a balance sheet prepared in accordance with GAAP, including footnotes and the Net Capital Disclosure, accessible through each of the following Internet locations:

(a) The broker-dealer's Website homepage, containing a hyperlink providing a direct link to the broker-dealer's balance sheet;

(b) Each page at which a customer can log-on to the broker-dealer's Website, containing a hyperlink providing a

² A broker-dealer may comply with this requirement by: (a) delivering the statements to its customers in paper copy form or (b) transmitting the statements to its customers electronically.

¹ Exchange Act Release No. 42222.