

particularly from remote terminals. Specific files containing SGI-M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at <http://csrc.nist.gov/cryptval/140-1/1401val.htm>. SGI-M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI-M files shall be properly labeled as "Safeguards Information—Modified Handling" and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI-M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI-M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI-M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI-M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed

would be considered completely destroyed.

[FR Doc. 04-25170 Filed 11-10-04; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: Tuesday, November 16, 2004, at 2:30 p.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Consideration of Docket No. MC2004-3, Rate and Service Changes to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation.

CONTACT PERSON FOR MORE INFORMATION:

Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001, 202-789-6820.

Dated: November 8, 2004.

Steven W. Williams,
Secretary.

[FR Doc. 04-25297 Filed 11-9-04; 12:57 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2321/803-178]

The Charles Talbot Fund; Notice of Application

November 5, 2004.

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

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").

APPLICANT: The Charles Talbot Fund (the "Fund" or "Applicant").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 205(e) of the Advisers Act from section 205(a)(1) of that Act.

SUMMARY OF APPLICATION: Applicant requests an order under section 205(e) of the Advisers Act to permit registered investment advisers to charge it performance-based advisory fees notwithstanding the prohibition set forth in section 205(a)(1) of the Act.

FILING DATES: The application was filed on October 28, 2003, and amended on

March 12, 2004, and amended further on May 7, 2004.

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 the Applicant with a copy of the request, either personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on November 30, 2004, and should be accompanied by proof of service on Applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: *Secretary:* SEC, 450 Fifth Street, NW., Washington, DC 20549. *Applicant:* The Charles Talbot Fund, 46775 Ann Arbor Trail, Plymouth, Michigan, 48170.

FOR FURTHER INFORMATION CONTACT: Marilyn Barker, Senior Counsel, or Jennifer L. Sawin, Assistant Director, Division of Investment Management, Office of Investment Adviser Regulation, at (202) 942-0719.

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.

Applicant's Representations

1. Applicant is a Michigan limited partnership formed in 1978 for general investment purposes so as to facilitate and simplify the investment of assets owned by the Talbot family. Applicant represents that the Fund is the Talbot family's principal investment vehicle, and is exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940 (the "Investment Company Act").¹

2. Charles F. Talbot, Jr., is the Fund's general partner. Mr. Talbot is compensated for services as general partner by pro rata participation in the gain or loss of the partnership. He is reimbursed for actual hours spent in the partnership business such as accounting. The Fund has no other executives or employees.

¹ Section 3(c)(1) generally exempts from the definition of investment company under the Investment Company Act any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities.

3. Applicant represents that Mr. Talbot is solely responsible for making the investment decisions for the Fund. At present, Mr. Talbot owns more than 90 percent of the Fund's capital.

4. The Fund's limited partners currently consist of Mr. Talbot's wife, three of Mr. Talbot's adult children and one of their spouses, eight of Mr. Talbot's grandchildren, and a small partnership ("BIF") whose partners currently consist of Mr. Talbot and one of his adult children.² Mr. Talbot's children acquired their interests in the Fund with assets received as gifts from Mr. Talbot's parents; Mr. Talbot's grandchildren acquired their interests as gifts from Mr. Talbot or from him and his former spouse. Mr. Talbot's daughter acquired her interest in the BIF partnership as a gift from Mr. Talbot.

5. Applicant represents that the partners of the Fund will be limited to Mr. Talbot, his siblings, spouse, direct lineal descendants by birth or adoption, spouses of such persons, estates of such persons, and trusts established by or for the benefit of such persons (collectively, "Family Members"), as well as partnerships whose partners consist only of Family Members.

6. Applicant states that it wants to participate in investment opportunities managed by registered investment advisers that seek to charge it a performance-based advisory fee pursuant to rule 205-3 under the Advisers Act. Applicant represents further that neither it nor any of its partners has any relationship (other than a present investment relationship) with, or is an affiliate or an interested person of, any registered investment adviser that would seek to charge it a performance fee pursuant to rule 205-3.

7. Applicant represents that the Fund is a "qualified purchaser" as defined in section 2(a)(51)(A)(ii) of the Investment Company Act³ and satisfies the net worth requirement for a "qualified client" as set forth in rule 205-3(d)(1) under the Advisers Act.⁴ Applicant

² Applicant represents that Mr. Talbot is the general partner of, and is solely responsible for the investment decisions for, the BIF partnership.

³ Applicant asserts that limiting partnership in the Fund to Family Members will assure that the Fund will continue to be a qualified purchaser under section 2(a)(51)(A)(ii).

⁴ Rule 205-3(d)(1) includes, as "qualified clients," a natural person who or a company that immediately after entering into the contract has at least \$750,000 under the management of the investment adviser; a natural person who or a company that the investment adviser reasonably believes, immediately prior to entering into the contract, to have a net worth exceeding \$1.5 million or to be a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act at the time the contract is entered into; and certain personnel of the investment adviser.

represents further that Mr. Talbot is a "qualified client" as defined in rule 205-3(d)(1) under the Advisers Act.

8. Applicant states that, of Mr. Talbot's children and grandchildren, only one is a "qualified client."

Applicant's Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered investment adviser, unless exempt from registration pursuant to section 203(b) of the Act, from entering into, extending, renewing, or performing under any investment advisory contract that provides for compensation based upon "a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client," commonly referred to as performance-based compensation or a performance fee.

2. Rule 205-3(a) under the Act provides an exemption from the prohibition in section 205(a)(1) provided each client entering into an investment advisory contract that provides for performance-based compensation is a "qualified client." Under rule 205-3(b), each equity owner of a "private investment company" is considered a client for purposes of rule 205-3(a).⁵ Applicant asserts that the Fund is a private investment company.

3. Because a number of the Fund's limited partners are not qualified clients, the Fund may not be treated as meeting the requirements of rule 205-3(a).

4. Applicant requests an order under section 205(e) of the Advisers Act granting an exemption from section 205(a)(1) of the Act so as to permit registered investment advisers to charge the Fund performance fees. Applicant asks that the relief requested be applicable to any Family Members that are not qualified clients and that are now or may later be admitted as partners in the Fund or the BIF partnership.

5. Section 205(e) of the Advisers Act provides that the Commission, by order upon application, may exempt any person, or any class or classes of persons, from section 205(a)(1) of the Act, if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protection of section 205(a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, and

⁵ Under rule 205-3(d)(3), a private investment company is a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

such other factors as the Commission determines are consistent with section 205.

6. Applicant asserts that exemptive relief to permit the Fund to be charged performance fees is appropriate and consistent with the purposes of 205(a)(1) of the Advisers Act. Applicant asserts that the request for relief complies with the factors specified in section 205(e) of the Act. Applicant states that Mr. Talbot, the sole investment decision-maker for the Fund, is a qualified client meeting the net worth requirement of rule 205-3(d)(1)(ii)(A) under the Act. Applicant asserts that Mr. Talbot is financially sophisticated, has substantial knowledge of and experience in financial matters, and is fully able to assess the potential risks of performance fees. Applicant further asserts that Mr. Talbot has a father's or grandfather's love for his family and may be reasonably presumed to act in the best interests of the Family Members.

7. Applicant further asserts that Mr. Talbot's children have substantial experience and are financially sophisticated, which provides an extra layer of protection for their interests as well as those of their children.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3148 Filed 11-10-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50637; File No. SR-Amex-2004-86]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading of Exchange Traded Fund Shares Pursuant to Unlisted Trading Privileges

November 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 26, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.