sold in any transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions. AEP is authorized under its restated articles of incorporation to issue 600,000,000 shares of common stock ($6.50 par value), of which 322,024,714 were issued and outstanding as of February 1, 2001. As of September 30, 2001, AEP's consolidated capitalization consisted of 63.0% indebtedness, 0.7% preferred stock, 1.3% mandatorily redeemable preferred securities and 35.0% common equity.

V. Interest Rate Hedges

AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate-hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or whose parent companies'' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors' Service or Fitch Investor Service. Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. AEP and/or the Financing Subsidiary will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

VI. Anticipatory Hedges

In addition, AEP requests authorization for it and/or the Financing Subsidiary to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (a) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (''Forward Sale''); (b) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (c) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (''Zero Cost Collar''); (d) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. AEP and/or the Financing Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. AEP may decide to lock in interest rates and/or limit its exposure to interest rate increases. AEP represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. AEP will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.[1]

VII. Use of Proceeds

The proceeds of any financing by the Financing Subsidiary or any Special Purpose Subsidiary will be remitted, paid as a dividend, loaned or otherwise transferred to AEP or its designee. The proceeds of the Preferred Securities, Debt Securities, Stock Purchase Contracts and Stock Purchase Units will be used to acquire the securities of associate companies and interests in other businesses, including interests in exempt wholesale generators (''EWGs'') and foreign utility holding companies (''FUCOs''), or in any transactions permitted under the Act and for other general corporate purposes, including the reduction of short-term indebtedness. AEP had approximately $3.6 billion outstanding short-term indebtedness as of September 30, 2001. No proceeds will be used to purchase generation assets currently owned by AEP or any affiliate unless the purchase has been approved by order of this Commission in File No. 70–9785 or other similar applications. AEP represents that no financing proceeds will be used to acquire the equity securities of any company or any interest in other businesses unless the acquisition has been approved by the Commission in this proceeding or in File No. 70–9353 or is in accordance with an available exemption under sections 32, 33 and 34 of the Act or rule 58 under the Act. AEP does not seek in this proceeding any increase in the amount it is permitted to invest in EWGs and FUCOs.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–942 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The proposed terms and conditions of the Interest Rate Hedges and Anticipatory Hedges are substantially the same as the Commission has approved in other cases. See Entergy Corporation, HCAR No. 27371 (April 3, 2001); New Century Energies, Inc., et al., HCAR No. 27000 (April 7, 1999); and Ameren Corp., et al., HCAR No. 27053 (July 23, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25359; 812–12468]

Conseco Fund Group, *et al.*; Notice of Application

January 9, 2002.

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

ACTION: Notice of application for an exemption under section 6(c) of the Investment Company Act of 1940 (''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Conseco Fund Group (''CFG''), Conseco Series Trust (''CST'' together with CFG, the ''Trusts''), and Conseco Capital Management, Inc. (the ''Adviser'').

Filing Dates: The application was filed on March 6, 2001, and amended on December 26, 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 February 4, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 11825 North Pennsylvania Street, Carmel, IN 46032.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

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 Massachusetts business trust, are registered under the Act as open-end management investment companies. Each Trust is organized as a series investment company and offers shares of multiple series (each series, a ''Fund,'' and together, the ''Funds''), each with its own investment objectives, policies, and restrictions.[1] The Adviser serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between each Trust and the Adviser that was approved by the respective Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholders (''Advisory Agreement''). The Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Subadvisory Agreements'') with subadvisers (''Subadvisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Subadviser is an investment adviser registered under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, termination, and replacement. The Adviser compensates the Subadvisers out of the fees paid to the Adviser by the Fund.

3. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that 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. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

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

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by the vote of a majority of its outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition number 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight of the Board) to oversee Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of each Trust's Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Subadviser is proposed for a Fund with an Affiliated Subadviser, the Board of the corresponding Trust, including a majority of the Independent Trustees,

[1] The applicants also request that any relief granted pursuant to the application also apply to future series of the Trusts and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application (''Future Funds,'' included in the term ''Funds''). The Trusts are the only existing investment companies that currently intend to rely on the requested order. No Fund will contain in its name the name of a Subadviser (as defined below).

will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders, within 90 days of the hiring of a Subadviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Subadviser(s) to manage all or a part of the Fund's assets; (c) monitor and evaluate the performance of Subadviser(s); (d) ensure that Subadvisers comply with each Subadvised Fund's investment objectives, restrictions, and policies by, among other things, implementing procedures reasonably designed to ensure compliance; and (e) allocate and, when appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, director or officer) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–941 Filed 1–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [66 FR 1524, January 11, 2002]

Status: Closed meeting.

Place: 450 Fifth Street, NW., Washington, DC.

Date and Time of Previously Announced Meeting: Tuesday, January 15, 2002 at 10:00 a.m.

Change in the Meeting: Time Change.

The closed meeting scheduled for Tuesday, January 15, 2002 at 10:00 a.m. has been changed to Tuesday, January 15, 2002 at 9:00 a.m.

Dated: January 11, 2002.

Jonathan G. Katz,

Secretary,

[FR Doc. 02–1094 Filed 1–11–02; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45252; File No. SR–Amex–2001–26]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Increase in the Exchange Regulatory Fee

January 8, 2002.

On May 7, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex Equity Fee Schedule to increase the regulatory fee from .00005 x Total Value to .000075 x Total Value for certain orders in Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts (collectively, the ''Products'') entered electronically into the Amex Order File from off the Floor (''System Orders'') by a member or member organization trading as an agent for the account of a non-member competing market maker.

The proposed rule change was published for comment in the **Federal Register** on June 18, 2001.[3] The Commission received no comments on the proposal. On December 12, 2001, the Amex filed an amendment to the proposed rule change.[4] In Amendment No. 1, the Amex made a technical amendment to the proposed rule change by further clarifying its purpose for increasing the Exchange's regulatory fee that does not need to be published for comment. In Amendment No. 1, the Exchange states that the regulatory fee increase has been put in place to ensure that the Amex has the appropriate resources to provide the regulatory, operational, and business development function necessary to meet the increasing demands of a complex and competitive marketplace.[5]

The Commission notes that the proposed rule change allows for disparate treatment of competing market makers in that it increases the regulatory fee for System Orders in the Products by a member or member organization trading as an agent for the account of a non-member.[6] However, the Commission notes that under the Amex's current fee schedule, orders in the Products by a member or member organization trading as an agent for the account of a non-member were not entitled to the same treatment as other orders in the fee schedule in that they were not exempt from the regulatory fee. This proposed rule change does not alter this result. Furthermore, the Commission believes that the Intermarket Trading System (''ITS'') will continue to provide an alternative means by which non-member competing market makers can access the Amex. ITS provides an avenue for non-member competing market makers to interact with trading interests on the Amex, fee-free.

For these reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44410 (June 12, 2001), 66 FR 32852.

[4] *See* letter from Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 11, 2001 (''Amendment No. 1'').

[5] Specifically, the Amex states that the Exchange continues to make heavy investments in: technologies to support the efficient trading of Exchange Traded Funds (''ETFs'') and HOLDRS on the Exchange; product development to bring new products to market; and the regulation of the EFT and HOLDRs markets. The Exchange believes that non-member competing market markers receive the most benefit from trading ETFs and HOLDRs on the Amex, with associated Amex technological enhancements and regulatory structure. The Exchange believes that the fee increase will support the infrastructure relied upon by the broader marketplace including competitive exchanges and market participants. *Id.*

[6] The Commission does not intend this proposal to establish a precedent to permit a primary market to make distinctions in the treatment of orders on its Floor as a means to discriminate unfairly against its competitors.