may file with the Commission an application for an exemption from the provisions of that subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of subsection (a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

3. If Donnelly becomes an employee of EQ Financial, Equitable and/or any of The Equitable Subsidiaries, the employer will become subject to the disqualification provisions of Section 9(a) because Donnelly will be an affiliated person of the employer.

4. Applicants submit that the statutory standards set forth above will be satisfied with respect to the relief requested under Section 9(c) of the 1940 Act. In this connection, Applicants believe that the application of the prohibitions of Section 9(a) to Applicants and The Equitable Subsidiaries because of the employmenmt of Donnelly would be unduly and disproportionately severe. Applicants also assert that their conduct and the conduct of the Equitable Subsidiaries has been such as to make it not against the public interest or the protection of investors to grant the requested relief.

5. Donnelly will not serve in any capacity related in any way to the provision of investment advice to any registered investment company or to acting as principal underwriter to any registered open-end investment company or registered face-amount certificate company or as principal underwriter or depositor to any registered unit investment trust.[1] Donnelly will not be a corporate officer of EQ Financial, Equitable or any of The Equitable Subsidiaries or serve in a policy-making role or participate in the management or administrative activities of EQ Financial, Equitable or any of The Equitable Subsidiaries relating to registered investment companies.

6. Applicants state that the conduct complained of by the Commission on the part of Donnelly did not relate to investment company activities. The injunction against Donnelly was entered more than 10 years ago and the events to which it related occurred more than 12 years ago. Applicants state that Donnelly has not been subject to similar action, or any action relating to his conduct as an agent of Equitable, nor to the best knowledge of Applicants after reasonable inquiry have any complaints been filed against Donnelly with the Commission, any self-regulatory organization, any state securities commission or any insurance regulatory authority since the date of the injunction.

7. Applicants state that Donnelly has informed Applicants that he complied with the disgorgement and payment obligations imposed on him under the injunction.

8. Applicants assert that the balance of fairness requires that the requested relief be granted. If the exemption is not granted, EQ Financial, Equitable and The Equitable Subsidiaries will not employ Donnelly because to do so would subject them to a Section 9(a) bar on investment company activities. Consequently, Donnelly would continue to be unable to offer his clients the full range of financial services available to be provided by a registered representative of EQ Financial and Equitable. Applicants believe this would unduly limit his business activities.

9. Finally, Applicants assert that the relief they request is virtually identical in all material respects to relief the Commission has granted on numerous previous occasions. *See e.g.* Gruntal & Co., Incorporated, Inv. Co. Act Rel. No. 19793 (Oct. 18, 1993).

Applicants' Condition

Applicants agree that the Commission's order granting the requested relief shall be subject to the following condition:

EQ Financial, Equitable and The Equitable Subsidiaries will not employ Donnelly in any capacity related directly to the provision of investment advisory services for a registered investment company, or acting as a principal underwriter for a registered open-end investment company or registered face-amount certificate company, or as a principal underwriter or depositor for a registered unit investment trust.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18302 Filed 7–18–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicants expect that Donnelly will be involved to some degree in the retail sale of investment company securities, including variable insurance products funded by separate accounts organized as unit investment trusts.

[Rel. No. IC–22069; International Series Release No. 1004; File No. 812–10054]

The New South Africa Fund Inc.

July 12, 1996.

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

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The New South Africa Fund Inc.

RELEVANT ACT SECTION: Section 10(f).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to purchase South African securities from an underwriting syndicate when applicant's investment adviser is an affiliated person of a principal underwriter in the syndicate.

FILING DATE: The application was filed on March 22, 1996 and amended on July 1, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 6, 1996 and should be accompanied by proof of service on the 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 5th Street, N.W., Washington, D.C. 20549. Applicant, c/o Bear Stearns Funds Management Inc. 245 Park Avenue, New York, N.Y. 10167.

FOR FURTHER INFORMATION CONTRACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENT INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a Maryland corporation. Applicant's investment objective is long-term appreciation

through investments principally in securities of issuers of South Africa, and, to a lesser extent, in other countries in the South African region. Under normal market conditions, at least 80% of applicant's assets will be invested in South African securities, including at least 65% of its assets in equity securities of South African issuers as well as up to 35% of its assets in certain fixed income securities which, in the investment adviser's judgment, have the potential for long-term capital appreciation.

2. Applicant's investment adviser is Fleming International Asset Management Limited (''FIAM''), a company organized under the laws of Great Britain. Robert Fleming Holding Limited (''RFHL'') is the ultimate corporate parent of FIAM.

3. Martin & Co. Inc., a South African brokerage firm, provides FIAM with research material containing factual, statistical and other information, including economic trends, concerning South Africa and other countries in the South African region, and their respective securities markets. Effective November 24, 1995, RFHL and Martin & Co. Inc formed a joint venture called Fleming Martin Holdings Lts. (''FMHL''). FMHL, together with FIAM, is deemed to be under the common control of RFHL, and, as such, is an affiliated person of FIAM within the meaning of section 2(a)A(3) of the Act.

4. Section 10(f) of the Act prohibits a registered investment company from purchasing, during the existence of any underwriting or selling syndicate, any security where a principal underwriter of such security is an officer, director, member of an advisory board, investment adviser, or employee of such investment company, or is a person with which any such listed person is affiliated. Because applicant's investment adviser is affiliated with FMHL, applicant is prohibited from purchasing securities in underwritten public offerings in South Africa in which FIAM, FMHL, RFHL, or any person of which these entities are affiliated, participate as principal underwriter.

5. Rule 10f–3 exempts a transaction from the provisions of section 10(f) if certain conditions are met. Subparagraph (a)(1) of rule 10f–3 requires that the securities purchased be part of an issue registered under the Securities Act of 1933 (the ''Securities Act''). Unless the South African securities are being offered publicly in the United States, they are not required to be registered under the Securities Act. Accordingly, most transactions in South African securities cannot meet the condition set forth in subparagraph (a)(1).

Applicant's Legal Analysis

1. In order to participate in underwritten public offerings in South Africa for which Fleming Martin Holdings Ltd., RFHL, or any of their respective affiliates acts as a principal underwriter, applicant requests an order exempting it from section 10(f) provided that (a) the securities purchased be listed or approved for listing on the Main Board of the Johannesburg Stock Exchange (''JSE''); [1] (b) with the exception of paragraph (a)(1) of rule 10f–3, all other conditions set forth in rule 10f–3 be satisfied; (c) the foreign securities subject to section 10(f) will be purchased in a public offering conducted in accordance with South African law and the rules and regulations of the JSE; and (d) all subject South African issuers will have available for prospective purchasers financial statements, audited in accordance with the accounting standards of South Africa, for the two years prior to the purchase.

2. An offering in South Africa is considered a public offering under South African law, and subject to various requirements in Schedule 3 of The South Africa Companies Act, 1973, if a prospectus is issued to a wide pool of persons. A prospectus also must be registered with the Registrar of Companies. The Registrar of Companies is the central registry for companies in South Africa. Its responsibilities include filing and maintaining public records relating to companies, including the Articles of Association, annual returns, information on directors and officers, and the existence of security interests over the assets of companies. The Registrar of Companies also reviews prospectuses filed with it to ensure that requirements as to form are satisfied.

3. The public offering price is fixed at the time of initial issuance and published in the offering prospectus, and the securities offered to and purchased by affiliates of underwriters as part of a public offering will be offered and sold under the same terms as to the general public. Applicant is not aware of any instances where the price of securities offered in a public offering was fixed at a premium to the market price. Applicant will not purchase securities that are offered in a public offering at a premium to the market price.

4. Applicant is not aware of any instance where a public offering was not addressed to the entire investment community of South Africa. In any event, applicant will not participate in any public offering unless the relevant offer is made to every class of investor who has the right to participate in the issue.

5. A public offering in South Africa usually is underwritten pursuant to an underwriting agreement in which the primary underwriters are obligated to purchase at a fixed price all of the securities being offered and which are not taken up by others under the offering. Applicant believes this underwriting arrangement effectively satisfies the ''firm commitment'' requirements of subparagraph (a)(3) of rule 10f–3.[2] Although other methods of underwriting exist, applicant will only purchase securities underwritten by such firm commitment method, or such other method that complies with the provisions of rule 10f–3(a)(3).

6. Securities purchased pursuant to the requested relief will be listed or approved for listing on the Main Board of the JSE. To be listed on the Main Board, a company must have: (a) a minimum subscribed capital, excluding revaluations of assets, of at least R2 million (approximately $461,800 under the current conversation rate) [3] in the form of not less than one million shares in issue; (b) a satisfactory profit history for the preceding three years, with a current audited level of earnings of at least R1 million (approximately $230,900), before taxation; (c) 10% of the total issued shares held by the public; (d) at least 300 public shareholders; and (e) a minimum initial price of shares not less than 100 cents per share (approximately, $.23).[4] In addition, listed companies are obliged to inform shareholders and the public of transactions by way of an announcement in the annual report, press announcement, or a circular to shareholders.

7. The only condition of rule 10f–3 that applicant cannot satisfy is the requirement that the securities to be

[1] The JSE is comprised of three separate markets: the Main Board, the Development Capital Market (''DCM''), and the Venture Capital Market (''VCM''). Applicant is not seeking relief with respect to any securities listed on either the DCM or VCM.

[2] Rule 10f–3(a)(3) provides that the securities to be purchased must be offered pursuant to an underwriting agreement under which the underwriters are committed to purchase all of the registered securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any thereof.

[3] On July 12, 1996, applicants submitted a letter to the SEC (''July 12 letter'') indicating that as of July 11, 1996, the *Wall Street Journal* reported a conversion rate of .2309 U.S. dollars per Rand.

[4] In the July 12 letter, applicants indicated that the reference to 100 cents was to South African cents and that there are 100 South African cents per Rand.

purchased be registered under the Securities Act. Applicant believes that purchasing the securities at issue pursuant to a public offering conducted in accordance with South African law and the rules and regulations of the JSE, together with the requirement that audited financial statements for the previous two years be available to all prospective purchasers, provide an adequate substitute for the registration requirement. The availability of such financial statements, as well as the other information regarding the issuer required under The South Africa Companies Act, 1973 and the rules and regulations of the JSE, provides FIAM with sufficient information to make informed investment decisions. Applicant also believes that the underwriters' and issuers' liability protect applicant's shareholders from a loss resulting from reliance by FIAM on a misleading prospectus. Taken together with the requirement that securities subject to section 10(f) be purchased in public offerings conducted in accordance with South African law and the rules and regulations of the JSE, investors can be assured that the securities are issued in the ''ordinary course of business,'' and in compliance with regulatory requirements similar to those imposed by the U.S. securities laws.

8. Applicant further believes that the widespread distribution of securities in a public offering in South Africa; the applicable prospectus delivery requirements; and the fixed offering price at which securities are offered to, and purchased by, unaffiliated purchasers on the same terms as any securities purchased by applicant, provide for the protection of investors in effectively preventing discriminatory and predatory practices in the underwriting of new issues that would be detrimental to applicant's shareholders.

9. In light of the foregoing, as well as the protection afforded by subparagraphs (a)(2) through (i) of rule 10f–3, applicant believes that purchases of securities in the manner described above will not raise any of the concerns addressed by section 10(f), and that the granting of the requested exemptive order is consistent with the protection of investors and with the purposes intended by rule 10f–3.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. The securities purchased be listed or be approved for listing on the Main Board of the JSE.

2. With the exception of paragraph (a)(1) of rule 10f–3, all other conditions set forth in rule 10f–3 be satisfied.

3. The foreign securities subject to section 10(f) will be purchased in a public offering conducted in accordance with South African law and the rules and regulations of the JSE.

4. All subject South African issuers will have available for prospective purchasers financial statements, audited in accordance with the accounting standards of South Africa, for the two years prior to the purchase.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18301 Filed 7–18–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37429; File No. SR–Amex–96–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Unbundling of Auto-Ex Orders

July 12, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on July 11, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Amex Rule 933 to prohibit the unbundling of customer option orders in order to make them eligible for entry into the Exchange's Automatic Execution System (''Auto-Ex''). The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

a. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed rule Change

(1) Purpose

The Exchange proposes to adopt new Amex Rule 933 which is designed to prohibit the unbundling (splitting up or dividing up) of customer option orders in order to make them eligible to fit the size parameters of the Exchange's Auto-Ex system, an automatic execution system intended for small orders of customers. The Exchange believes that Auto-Ex should give near instantaneous single price execution of such orders at prevailing bid/offer prices. Currently, the size parameters for customer Auto-Ex orders are generally 10 contracts for equity options with larger amounts available for certain index options.

Automatic execution systems were introduced more than 10 years ago by the Amex and other option exchanges in response to member firm suggestions that customers would be helped in gaining confidence in the listed options markets if quick, single price executions at posted (prevailing) prices were available. The Amex initiated Auto-Ex in certain index options in the mid-1980s and later extended its applicability to equity options.

Over the past several years, due in large part to enhancements in technology and market minding systems, more customers and other market participants have obtained the ability to use a combination of high speed automated market watch systems and computer generated orders to enter orders directly or indirectly into the automatic execution systems of options exchanges. In order to fit within the size parameters of such systems, large size orders are frequently spilt up into small size orders which give rise to a series of sequential (or near sequential) orders being entered.

For example, a member with a customer order to buy 20 contracts at the prevailing market price in an Auto-Ex eligible equity option, could structure the order so it is split up and transmitted as two orders to buy 10 contracts each. The Exchange believes that such unbundling compromises the basic purpose for which automatic execution systems were adopted.