in the complaint (''Complaint'') that JPMSI violated Rule 101 of Regulation M under the Exchange Act by attempting to induce certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings (''IPOs'') it underwrote during the restricted period of such IPOs. In addition, the Complaint alleged that JPMSI violated NASD Conduct Rule 2110 by persuading one or more institutional customers to take an allocation of a ''cold'' IPO by promising to reward the customer with an allocation of an upcoming ''hot'' IPO. The alleged violations occurred in connection with certain IPOs underwritten by JPMSI from March 1999 through August 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMSI consented to the entry of the Injunction as well as the payment of a civil penalty of $25 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that because JPMSI and the Applicants are under common control of JPMC, JPMSI is an ''affiliated person'' of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants recently applied for, and received, an order of exemption pursuant to section 9(c) of the Act for conduct relating to Enron Corp.'s financial statement disclosure of transactions with affiliates of JPMC.[3] In addition, Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.[4]

Applicants' Condition

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

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26098 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] JF International Management Inc., *et al.*, Investment Company Act Release Nos. 26141 (July 28, 2003)(notice and temporary order) and 26168 (August 26, 2003)(permanent order).

[4] J.P. Morgan Securities Inc. *et al.*, File No. 812–12959.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 58728, October 10, 2003]

STATUS: Closed meeting.

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

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 16, 2003 at 10 a.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the closed meeting of Thursday, October 16, 2003: Litigation matter.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: October 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–26344 Filed 10–14–03; 3:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48610; File No. SR–Amex–2003–42]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements

October 9, 2003.

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 May 6, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 24, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] On September 10, 2003, the Amex filed Amendment No. 2 to the proposed rule change.[4] On October 1, 2003, the Amex filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to amend Section 711 of the Amex *Company Guide* relating to shareholder approval of stock option and equity compensation plans.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

American Stock Exchange LLC Company Guide

* * * * *

Sec. 711, [Options to Officers, Directors or Key Employees]—*Shareholder Approval of Stock Option and Equity Compensation Plans*

Approval of shareholders is required in accordance with Section 705 [(unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for] *with respect to the establishment of (or material amendment to) a stock* option[s] *or purchase plan or other equity compensation arrangement pursuant to which options or stock may be acquired by officers, directors, employees, or consultants* [granted or to be granted to officers, directors or key employees], regardless of whether or not such authorization is required by law or by the company's charter*, except for*:[.]

[**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:]

(a) [such options are issued] *issuances* to an individual, not previously *an* employee[d] *or director of* [by] the company, *or following a bonafide period of non-employment,* as an inducement [essential] *material* to entering into [a contract of] employment with the company provided that *such issuances are approved by the company's independent compensation committee or a majority of the company's independent directors, and, promptly following an issuance of any employment inducement grant in reliance on this exception, the company discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved* [the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock]; or

(b) [such options are to be granted:]

[(i)] [under a] *tax qualified, non-discriminatory employee benefit* plan*s* [or arrangement] (*e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the company's independent compensation committee or a majority of the company's independent directors; or plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market value* [in which all, or substantially all, of the company's employees participate, in a fair and equitable manner]; or

(c) a plan or arrangement relating to an acquisition or merger; or

(d) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).

A listed company is required to notify the Exchange in writing with respect to the use of any of the exceptions set forth in paragraphs (a) through (d).

[(ii) under a plan or arrangement for officers, directors or key employees provided such incentive arrangements do not authorize the issuance of more than 5% of outstanding common stock in any one year and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of such common stock. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)]

[For purposes of the above policy, the term ''options'' includes not only the usual type of nontransferable options granted in consideration of continued employment, but also any other arrangement under which controlling shareholders, officers, directors or key employees may acquire (other than as part of a public offering) stock or convertible securities of a company at a price below market price at the time such stock is acquired or through the use of credit extended, directly or indirectly, by the company. Thus, the sale to such a person(s) of a common stock purchase warrant or right (not part

---

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 22, 2003 (''Amendment No. 1''). Amendment No. 1 supercedes and replaces Amex's original Rule 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 9, 2003 (''Amendment No. 2''). Amendment No. 2 supercedes and replaces Amex's original Rule 19b–4 filing and Amendment No. 1 in their entirety.

[5] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Sapna C. Patel, Special Counsel, Division, Commission, dated October 1, 2003 (''Amendment No. 3''). In Amendment No. 3, the Amex made a technical change to the proposed rule language.