

benefit of the Family. Applicant states that it has no public clients in the sense of retail or institutional investors, and that it has no plans to solicit or accept clients from the retail or institutional public. Applicant also states that it does not hold itself out to the public as an investment adviser, does not engage in any advertising, or attend investment management-related conferences as a vendor or conduct any marketing activities. Applicant asserts that serving as the "family office" for the Family has been, is, and will continue to be the sole purpose for its existence and operation.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26775; 812-13168]

### Boston Safe Advisors, Inc., et al.; Notice of Application and Temporary Order

February 24, 2005.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them and other companies of which CIBC Mellon Trust Company ("CIBC Mellon") is or becomes an affiliated person ("Covered Persons") from section 9(a) of the Act with respect to a securities-related injunction entered against CIBC Mellon on February 24, 2005 by the U.S. District Court for District of Columbia (the "Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order with respect to the Injunction.

*Applicants:* Boston Safe Advisors, Inc., The Boston Company Asset Management LLC, Dreyfus Service Corporation ("Dreyfus Service"), The Dreyfus Corporation, Founders Asset Management LLC, Franklin Portfolio Associates LLC, Mellon Capital Management Corporation, Mellon Equity Associates LLP, Mellon Funds Distributor, L.P. ("Mellon Funds"), Newton Capital Management Limited, Pareto Partners and Standish Mellon Asset Management Company LLC

(together, "Applicants," included in the term Covered Persons).

*Filing Date:* The application was filed on February 17, 2005.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2005, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Mellon Financial Corporation, One Mellon Center, 500 Grant Center, Pittsburgh, Pennsylvania 15258-0001.

**FOR FURTHER INFORMATION, CONTACT:** Shannon Conaty, Attorney-Adviser, or Todd F. Kuehl, Branch Chief, at (202) 551-6809 (Division of Investment Management, Office of Investment Company Regulation).

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

### Applicants' Representations

1. CIBC Mellon, a Canadian corporation, is engaged in the business of providing transfer agent and corporate trust services. Applicants (other than Dreyfus Service and Mellon Funds) serve as investment adviser or sub-adviser for one or more registered investment companies ("Funds"). Dreyfus Service and Mellon Funds act as the depositor or principal underwriter for certain Funds.

2. On February 24, 2005, the U.S. District Court for the District of Columbia entered the Injunction against CIBC Mellon in a matter brought by the Commission.<sup>1</sup> The Commission alleged in the complaint ("Complaint") that CIBC Mellon violated sections 5(a)(1)

and (2) of the Securities Act of 1933, sections 10(b), 15(a) and 17A of the Securities Exchange Act of 1934 ("Exchange Act") and rule 10b-5 under the Exchange Act. The Complaint alleged that CIBC Mellon participated in a fraudulent scheme to promote, distribute and sell the stock of a now defunct Canadian telecommunications company by supplying the perpetrators of the scheme with a virtually limitless supply of purportedly "free trading" stock and that CIBC Mellon failed to register with the Commission as a transfer agent and as a broker-dealer. The Injunction enjoined CIBC Mellon, its agents, servants, employees, attorneys and all persons in active concert or in participation with them from violating the provisions of the federal securities laws cited in the Complaint. Without admitting or denying the allegations in the Complaint, CIBC Mellon consented to the entry of the Injunction as well as the payment of disgorgement and penalties and other equitable relief.

### Applicants' Legal Analysis

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 UIT 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 CIBC Mellon is an affiliated person of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

1. 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

<sup>1</sup> *Securities and Exchange Commission v. CIBC Mellon Trust Company*, 1:05CV0333 (D.D.C., filed February 24, 2005) (the "Action").

filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Covered Persons from the disqualification provisions of section 9(a) of the Act.

2. Applicants believe they meet the standard 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).

3. The Applicants state that the alleged violations giving rise to the Injunction did not involve any of the Applicants or any Fund. The Applicants also state that no current or former officer or employee of any of the Applicants participated in any way in the conduct giving rise to the Injunction. Additionally, Applicants state that the personnel at CIBC Mellon who were involved in the conduct that forms the basis for the Injunction have had no involvement in providing advisory, sub-advisory or principal underwriting services to the Funds. Applicants state that CIBC Mellon does not serve, nor has it served, as transfer agent to any Fund or as trustee to any registered unit investment trust.

4. Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Injunction, any impact on the Funds, and this application. Applicants will provide the Boards with all information concerning the Injunction and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

5. Applicants state that the inability to continue providing advisory and sub-advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. 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 underwriting Funds.

6. A predecessor to Covered Persons, The Boston Company Advisors, Inc., previously was subject to an injunction

that triggered section 9(a) and received an exemption under section 9(c).<sup>2</sup>

#### 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, Applicants, 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 the 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 Commission takes final action on an application for a permanent order.

By the Commission.  
Margaret H. McFarland,  
Deputy Secretary.  
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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26764; 812-13159]

#### Goldman, Sachs & Co., et al.; Notice of Application and Temporary Order

February 23, 2005.

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

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Goldman, Sachs & Co. ("Goldman Sachs") on February 8, 2005 by the United States District Court for the Southern District of New York (the

"Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* Goldman Sachs, Goldman Sachs Asset Management, L.P., Goldman Sachs Asset Management International, and Goldman Sachs Princeton LLC (together, the "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on January 25, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2005, 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 Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Howard Surloff, Esq., Goldman, Sachs & Co., 37th Floor, One New York Plaza, New York, NY 10004.

**FOR FURTHER INFORMATION, CONTACT:** Courtney S. Thornton, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

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

#### Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act 1940 (the "Advisers Act"). Goldman Sachs, a New York limited partnership, is a global investment banking and securities firm. Goldman

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which Goldman Sachs is or hereafter becomes an affiliated person in the future (together with Applicants, "Covered Persons").

<sup>2</sup> E.F. Hutton & Company Inc., et al., Investment Company Act Release Nos. 16401 (May 16, 1988)(notice) and 17036 (Jun. 30, 1989)(order).