

is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least \$1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least \$150 million.

5. Each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Manager of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. The Manager of each Fund will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Firm will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors to answer general questions regarding an

investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. The Firm, however, will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. The Firm will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, the Firm will be the sole manager of the Fund, own at least 95% of the voting Interests of the Fund, and make all investment and other operational decisions for the Fund.

9. The Firm will own not less than 5% of the economic Interests issued by each Series of the Fund, and (as discussed above) at least 95% of the voting Interests of the Fund. In addition, the Firm and its Partners (directly or through Qualified Investment Vehicles) together will own at least 80% of the economic Interests of each Series.

10. The Firm prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, the Firm prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. The Firm, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),³ and will comply with all applicable requirements of rule 701(e).⁴

³ If the Firm relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

⁴ In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-911 Filed 1-15-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25887; 812-12917]

Robertson Stephens Inc., et al.; Notice of Application

January 10, 2003.

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

ACTION: Temporary order and notice of application 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 entities of which Robertson Stephens, Inc. ("RS") is or becomes an affiliated person from section 9(a) of the Act, with respect to a securities-related injunction entered on January 10, 2003, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: RS, Colonial Management Associates, Inc., Columbia Management Co., Crabbe Huson Group, Inc., Fleet Investment Advisors, Inc., Liberty Advisory Services Corp., Liberty Asset Management Company, Liberty Wanger Asset Management, L.P., Newport Fund Management, Inc., and Stein Roe & Farnham Incorporated (together, the "Adviser Applicants"), and Liberty Funds Distributor, Inc. and Columbia Financial Center, Inc. (together, the "Underwriter Applicants").¹

Filing Date: The application was filed on January 10, 2003. In addition, a letter was submitted on January 10, 2003.

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 February 4, 2003, and should be accompanied by proof of service on applicants, in the form of an

¹ Applicants request that any relief granted pursuant to the application also apply to any other entity of which RS is or hereafter becomes an affiliated person (together with the applicants, the "Covered Persons").

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 FleetBoston Financial Corporation, 100 Federal Street, Boston, MA 02210.

FOR FURTHER INFORMATION, CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Michael W. Mundt, Senior Special Counsel, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. RS, a Delaware corporation, is a full service investment banking firm, and is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser under the Investment Advisers Act of 1940. The ultimate parent company of RS is FleetBoston Financial Corporation, which is also the ultimate parent company of the Adviser Applicants, who serve as investment advisers to various registered investment companies (the "Funds"), and of the Underwriter Applicants, who serve as principal underwriters to Funds.

2. On January 10, 2003, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief ("Final Judgment") in a matter brought by the Commission.² The Commission alleged that RS allocated "hot" initial public offerings ("IPOs") to customers willing to pay a portion of their profits from those IPOs to RS and violated section 17(a) of the Exchange Act, and rule 17a-3 thereunder, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. ("NASD"). The Final Judgment, among other things, enjoined RS, directly or through its officers, directors, agents and employees, from violating section

17(a) of the Exchange Act, and rule 17a-3 thereunder, and NASD Conduct Rules 2110 and 2320. Additionally, the Final Judgment ordered RS to pay disgorgement of \$23 million and pay a civil penalty of \$5 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. Because the applicants are all subsidiaries of the same ultimate parent company, applicants state that they are under common control, and as such are "affiliated persons" of RS within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Final Judgment, applicants may 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 an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the 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) of the Act seeking temporary and permanent orders exempting Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to Covered Persons 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). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former officers or

employees of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. Applicants also state that no applicant has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants state that the inability of the Adviser Applicants to continue providing advisory services to Funds and the inability of the Underwriter Applicants to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Additionally, applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe.

5. The Adviser Applicants and the Underwriter Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds that they serve regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. The Adviser Applicants and Underwriter Applicants will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

Applicants' Condition

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

1. 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 of a temporary exemption.

Accordingly,
It is hereby ordered, pursuant to section 9(c) of the Act, that the Covered

² *Securities and Exchange Commission v. Robertson Stephens, Inc.*, Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C., Jan. 10, 2003).

Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Final Judgment, 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.

[FR Doc. 03-956 Filed 1-15-03; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 1492, January 10, 2003].

STATUS: Open Meeting.

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

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, January 15, 2003.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Open Meeting scheduled for Wednesday, January 15, 2003, but will be considered at a later meeting to be announced: Regulation AC (Analyst Certification) Commissioner Goldschmid, as duty officer, determined 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: January 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03-1105 Filed 1-14-03; 11:30 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Federal Register Citation of Previous Announcement: [68 FR 1492, January 10, 2003].

STATUS: Closed Meetings.

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

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, January 7, 2003 at 10 a.m., and Thursday, January 9, 2003 at 9 a.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Tuesday, January 7, 2003 at 10 a.m. was changed to Tuesday, January 7, 2003 at 10:45 a.m., and the Closed Meeting scheduled for Thursday, January 9, 2003 at 9 a.m. was changed to Thursday, January 9, 2003 at 10 a.m.

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: January 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-1110 Filed 1-14-03; 11:30 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47153; File No. SR-Amex-2002-117]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

January 10, 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 December 30, 2002, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in Item II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 III below. The Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions, which was originally approved by the Commission in June 2000, was most recently extended on October 9, 2002, and is due to expire on January 7, 2003.³

Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.⁴ The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented

³ The pilot program, originally approved on June 2, 2000, was subsequently extended on two occasions, reinstated after a brief lapse in July 2001, extended again in October 2001, January, April, July and October 2002. See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000), 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 28, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); and 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002).

⁴ Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.