

Dated: September 15, 1997.

Noel F. Dudley

Acting Chief Nuclear Reactors Branch.

[FR Doc. 97-25076 Filed 9-19-97; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22822; 812-10736]

Liberty All-Star Growth Fund, Inc.; Notice of Application

September 15, 1997.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act granting an exemption from section 19(b) and under rule 19b-1 to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

FILING DATE: The application was filed on July 23, 1997.

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 October 9, 1997, and should be accompanied by proof of service on 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, DC 20549. Applicant, 600 Atlantic Ave., Federal Reserve Plaza, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942-0562, or Mary Kay Frech, Branch Chief, 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 5th Street N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. Applicant is a closed-end management investment company organized as a Maryland corporation. Applicant's investment objective is to invest primarily in a diversified portfolio of equity securities.

2. On February 20, 1997, applicant adopted a distribution policy (the "Distribution Policy") that calls for quarterly distributions of 2.5% of applicant's net asset value at the time of declaration, for a total of approximately 10% of net asset value per year. If the total distributions required by the Distribution Policy exceed applicant's investment income and net realized capital gains, the excess will be treated as a return of capital. If applicant's net investment income, net short-term realized gains and net long-term realized gains for any year exceed the amount required to be distributed under its Distribution Policy, applicant at its discretion may retain, and not distribute, net realized long-term capital gains to the extent of such excess.

3. Applicant states that the distributions will provide a steady cash flow to shareholders, and, during periods when their per share net asset value is increasing, a means for shareholders to receive on a regular basis some of the appreciation in value of their shares. Applicant also believes that the Distribution Policy plays a role in reducing the discount from net asset value at which applicant's shares typically trade.

4. Applicant requests relief to permit applicant to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b-1(a) permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b-1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total

amount distributed for the year. Rule 19b-1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that the limitation on the number of net long-term capital gains distributions in rule 19b-1 prohibits applicant from including available net long-term capital gains in certain of its fixed quarterly distributions. As a result, applicant states that it must fund these quarterly distributions with returns on capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). Applicant further asserts that, in order to distribute all of its long-term capital gains within the limits on the number of long-term capital gains distributions in rule 19b-1, applicant may be required to make certain of its quarterly distributions in excess of the total annual amount called for by the Distribution Policy. Alternatively, applicant states that it may be forced to retain long-term capital gains and pay the applicable taxes. Applicant asserts that the application of rule 19b-1 to its Distribution Policy may cause anomalous results and create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b-1 are not present in applicant's situation. One of these concerns is that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from investment income. Applicant states that the Distribution Policy has been disclosed in applicant's communications to its shareholders, including its 1996 annual report, and applicant will disclose the Distribution Policy in future quarterly and annual reports to shareholders. Applicant further states that, in accordance with rule 19a-1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or return of capital) will accompany each distribution (or the confirmation of the reinvestment under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution received during the year will be included with applicant's IRS Form 1099-DIV report sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). Applicant believes that its shareholders fully understand that their distributions

are not tied to applicant's net investment income and realized capital gains and do not represent yield or investment return.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper sales practices, including in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend"), when the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

5. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b-1. Applicant asserts that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-25029 Filed 9-19-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39079; International Series Release No. 1099, File No. SR-Amex-96-38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, and 3 Thereto by the American Stock Exchange, Inc., Relating to the Listing and Trading of Warrants on the ING Barings Securities Limited BEMI Latin America Index

September 15, 1997.

I. Introduction

On October 15, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the proposed rule change to list and trade warrants on the ING Barings Securities Limited BEMI Latin America Index ("Index").³ A notice appeared in the **Federal Register** on November 21, 1996.⁴ No comment letters were received concerning the proposed rule change. On December 24, 1996, March 3, 1997 and June 3, 1997, the Exchange filed Amendment Nos. 1, 2 and 3, respectively, to the proposed rule change.⁵ This order approves the Amex's proposal, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade, under Section 106 of the *Amex Company Guide*, cash-settled index warrants based on the Index.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 37960 (November 15, 1996).

⁴ See 61 FR 59261.

⁵ See Letters from Claire P. McGrath, Managing Director & Special Counsel, Derivative Securities, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation ("Division"), SEC, dated December 23, 1996 ("Amendment No. 1"), February 28, 1997 ("Amendment No. 2"), and June 3, 1997 ("Amendment No. 3"), respectively. Amendment No. 1, sets forth, among other things, the definition of "available capitalization," the calculation formula for the Index and the foreign stock exchanges with which the Amex has comprehensive surveillance sharing agreements. In Amendment No. 2, the Amex provides for each Index component, the average daily trading volume for the six month period ending December 31, 1996 and their weights in the Index. In Amendment No. 3, the Amex provides Index maintenance standards.

A. Design of the Index

The Exchange represents that the Index is a market capitalization-weighted broad-based index developed by ING Barings Securities Limited ("Barings") comprised of 122 stocks from 112 companies from the following seven Latin American countries: Argentina; Brazil; Chile; Colombia; Mexico; Peru; and Venezuela.⁶ In addition, the stocks represent eleven different industry groups. As of June 30, 1997, the number of stocks and weightings in the Index was as follows: Argentina 22 stocks/12.63% weighting; Brazil 22 stocks/46.84% weighting; Chile 21 stocks/11.20% weighting; Colombia 12 stocks/1.50% weighting; Mexico 26 stocks/21.76% weighting; Peru 12 stocks/3.90% weighting; and Venezuela 7 stocks/2.16% weighting. As of the same date, the largest stock accounted for 10.95% of the Index weight, while the smallest accounted for 0.016%. The top five stocks in the Index by weight accounted for 32.15%.

The total available market capitalization of the Index was \$158,437,566,290 billion on that date.⁷ The average available market capitalization of these companies was \$1,298,668,576 billion. The individual available market capitalization of the companies ranged from \$25,050,774 million to \$17,343,762,504 billion.

B. Maintenance of the Index

The Index is maintained by Barings' Recomposition Committee. The Recomposition Committee, established at the time of the launch of the Index, reviews on a quarterly basis the Index rules and composition. The Recomposition Committee implements changes or fixes standards as appropriate and oversees the security environment of the Index and its record-keeping. The quarterly meeting is normally held in the second week of the last month of the quarter. The date of these meetings is posted at least two months in advance on Reuters and the results are publicly disclosed on Reuters the day after a meeting. Actual implementation of any changes to the composition of the Index occurs on the last day of the month that the meeting is held. This is approximately two

⁶ The Index is a sub-index of the Barings Emerging Markets Index ("BEMI").

⁷ A company's "available capitalization" is defined as the lower of (i) the company's "free float" or (ii) the legally available capitalization of the company. A company's "free float" is defined as the percentage of shares which could reasonably be expected to trade on the open market. Generally, government holdings, corporate cross-ownership and other strategic holdings are not considered freely floating.