create a ''senior security'' as such term is defined in Section 18(g) of the Act, with respect to any contract owner or Qualified Plan participant as opposed to an Adviser or its affiliate. Each shareholder has rights only with respect to its respective shares of the Funds. Shareholders can only redeem such shares at their net asset value. No shareholder of any of the funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

13. Applicants assert that permitting a Fund to sell its shares to an Adviser of a Fund or to an affiliate of an Adviser, in compliance with Treasury Regulation 1.817–5(f)(3) will enhance Fund management without raising significant concerns regarding irreconcilable material conflicts. Section 14(a) of the Act generally requires that an investment company have a net worth of at least $100,000 upon making a public offering of its shares. Funds also will require more limited amounts of initial capital in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. In addition, the funds may wish to purchase a substantial portfolio of securities upon commencement of operations and will require capital to do so. A potential source of the requisite initial capital is an Adviser or an affiliate. These parties may have an interest in making the requisite capital expenditure, and in participating with the fund in its organization. However, Applicants submit that the provision of seed capital or the purchase of shares in connection with the management of a Fund by its Adviser or an affiliate of the Adviser may be deemed to violate the exclusivity requirements of Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15).

14. Applicants anticipate that such investment by an Adviser or its affiliate generally will be limited in scope and duration, and will be made only in connection with the operation of the Funds. Given the conditions of Treasury Regulation 1.817–5(f)(3) as described herein and the harmony of interest between a Fund, on the one hand, and its Adviser, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such limited investments should not implicate the concerns discussed above regarding the creation of irreconcilable material conflicts. Instead, permitting investment by Advisers or their affiliates will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations. The return on shares held by an Adviser or its affiliate will be calculated in the same manner as for shares held by a separate account. Any shares of a Fund purchased by the Adviser or its affiliate will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury Regulations. Neither the Adviser nor its affiliate will sell such shares of the Fund to the public.

Applicants' Conditions

Applicants have consented to the following conditions, in addition to the conditions set forth in the Original Order:

1. The Adviser or an affiliate, all Participating Insurance Companies and any Qualified Plan that executes a fund participation agreement upon becoming the owner of 10% or more of the shares of a Fund (''Participating Plan'') will be promptly informed in writing of any determination of the Board of Trustees of the Trust that an irreconcilable material conflict exists, and its implications.

2. As long as the Commission interprets the Act to require ''pass-through'' voting privileges for contract owners, whose contracts are funded through a separate account, an Adviser, or if applicable, any of its affiliates, will vote its shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the Fund; provided, however, that the Adviser or any such affiliate shall vote its shares in such other manner as may be required by the Commission staff.

3. All reports of potential or existing conflicts received by the Board of Trustees of the Trust, and all Board action with regard to determining the existence of a conflict, notifying the Adviser or any of its affiliates, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

Conclusion

For the reasons set forth above. Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24548 Filed 9–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24014; 812–648]

Stein Roe Floating Rate Income Fund, et al., Notice of Application

September 15, 1999.

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

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application

Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charges.

Applicants

Stein Roe Floating Rate Income Fund (the ''Trust'' or a ''Fund''), Stein Roe Advisor Floating Rate Advantage Fund (the ''Floating Rate Fund'' or a ''Fund'' and together with the Trust, the ''Funds''), Stein Roe Floating Rate Limited Liability Company (the ''Portfolio''), Stein Roe & Farnham Incorporated (the ''Adviser''), Liberty Funds Distributor, Inc. (the ''Distributor''), and Colonial Management Associates, Inc. (the ''Administrator'').

Filing Dates

The application was filed on June 9, 1999 and amended on August 27, 1999. 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 October 12, 1999, 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, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Christine Y. Greenlees, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Fund is organized as a Massachusetts business trust. The Trust is, and the Floating Rate Fund will be, registered under the Act as closed-end management investment companies. The Portfolio is organized as a Delaware limited liability company, and is registered under the Act as a closed-end management investment company.

2. The Adviser, registered under the Investment Advisers Act of 1940 (''Advisers Act''), has overall responsibility for the management of the Funds and serves as investment adviser to the Portfolio and will serve as investment adviser to the Floating Rate Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, distributes each Fund's shares. The Administrator is registered under the Advisers Act and serves as administrator to the Floating Rate Fund. Each of the Adviser, the Distributor, and the Administrator is an indirect wholly-owned subsidiary of Liberty Financial Companies, Inc., which is a majority-owned subsidiary of Liberty Mutual Insurance Company. Applicants request that the order also apply to any other registered closed-end investment company for which the Administrator, the Adviser or the Distributor or any entity controlling, controlled by, or under common control with the Administrator, the Adviser or the Distributor acts as investment adviser or principal underwriter.[1]

3. Each Fund's investment objective is to provide a high level of current income, consistent with the preservation of capital. The Trust operates as a feeder fund in a master/feeder structure and invests all of its net investable assets in the Portfolio, a master fund with the same investment objective and policies as the Trust. The Portfolio does, and the Floating Rate Fund will, invest primarily in senior secured floating or variable rate loans made by commercial banks, investment banks and finance companies to commercial and industrial borrowers (''Loans''). Under normal market conditions, at least 80% of each of the Portfolio's and the Floating Rate Fund's total assets will be invested in Loans. Up to 20% of each of the Portfolio's and the Floating Rate Fund's total assets may be invested in high quality, short-term debt securities with remaining maturities of one year or less and warrants, equity securities and, in limited circumstances, junior debt securities acquired in connection with investments in Loans.

4. The Trust does, and the Floating Rate Fund intends to, continuously offer their shares to the public at net asset value. The Trust's shares are not, and the Floating Rate Fund's shares will not be, offered or traded in the secondary market and will not be listed on any exchange or quoted on any quotation medium. The Trust and the Portfolio do, and the Floating Rate Fund intends to, operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and make periodic repurchase offers to their shareholders.

5. The Trust currently does not have multiple classes of shares. Applicants propose to structure each of the Funds as a multiple-class fund, with each class of shares having a different sales charge structure. Each Fund will offer four classes of shares: Class A Shares, Class B Shares, Class C Shares, and Class Z Shares. Class A Shares will be issued upon automatic conversion of Class B Shares, as described below, and also may be offered with a front-end sales load that may be waived in certain circumstances. Class B Shares will be offered with no front-end sales charge but will be subject to an early withdrawal charge (''EWC'') that declines over time to 0% after the end of the eighth year that a shareholder owns Class B Shares. Class B Shares will automatically convert to Class A Shares eight years from the date of purchase. Shareholders will not incur any sales charge on the conversion of Class B Shares to Class A Shares. Class C Shares will be offered with no front-end sales charge but will be subject to an EWC of 1% during the first three years that a shareholder owns Class C Shares. The Class B and Class C EWCs may be waived in certain circumstances. Class A, Class B and Class C Shares will be subject to an annual service fee of .25% of average daily net assets. In addition, Class A Shares will be subject to an annual distribution fee of .10% of average daily net assets. Each of Class B Shares and Class C Shares will be subject to an annual distribution fee of up to .75% of average daily net assets. The shares currently offered by the Trust will be designated Class Z Shares, and each Fund also will offer Class Z Shares that will be sold to institutional investors. Class Z Shares are not and will not be subject to distribution fees, service fees, front-end sales charges, or EWCs. Applicants represent that the service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'') as if each Fund were an open-end investment company. Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale, as is required for open-end multi-class funds under Form N–1A.

6. All expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of a Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees (including transfer agency fees), and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Each Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, Class C, and Class Z Shares. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

7. Each Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, a Fund will comply with rule

[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each investment company presently intending to rely on the relief requested in this application is listed as an applicant.

22d–1 under the Act as if it were an open-end investment company.

8. Each Fund may offer its shareholders an exchange feature under which shareholders of a Fund may, during any quarterly repurchase period, exchange their shares for shares of the same class of other funds in the Liberty group of investment companies. Any exchange option will comply with rule 11a–3 under the Act as if a Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, a Fund will treat the EWC as if it were a contingent deferred sales charge (''CDSC'').

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of a Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of a Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that 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. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit a Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that a Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company will purchase any securities of which it is the issuer, except: (i) On a securities exchange or other open market; (ii) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (iii) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the 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. Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchases that have been held for less than a specified period.

8. Applicants submit that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and that EWCs may discourage investors from moving their money quickly in and out of a Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end investment companies. Each fund also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that each Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 to permit each Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicant's Condition

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

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24547 Filed 9–20–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41866; File No. SR–Amex–99–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Amendment of Commentary .05 to Rule 155

September 13, 1999.

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 July 9, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on August 2, 1999.[3] The proposed rule change, as amended, is described in Items I, II, and III 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.

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

Under the proposal, a member seeking to break an equity or option trade[4] must first obtain written Floor Official approval. The member seeking the rejection must show good cause for the Floor Official to form the belief that the execution was inconsistent with the specialist's responsibility to maintain a fair and orderly market. The text of the proposed rule change is as follows. New text is italicized and deleted text is bracketed.

Exchange Rule 155

* * * * *

.05(i) If a specialist elects to take or supply for his own account the securities named in an order entrusted to him by another member or member organization, such member or organization shall be so notified as follows:

(a) If such securities were named in an order received by the specialist through the Post Execution Reporting (''PER'') System or the Amex Options Switch (''AMOS'') System, the Exchange shall furnish a report of the transaction; or

(b) If such securities were named in an order received by the specialist in any other manner, the specialist shall indicate on the copy of the order ticket to be returned to the member or member organization that he executed the order as principal.

(ii) A member or member organization *that seeks to* [may] reject a transaction for which notice is required to be furnished pursuant to paragraph (i) above *shall request Floor Official review of the transaction in writing promptly after receiving such notice and shall advise* [by so advising] the relevant specialist in writing *contemporaneously with the request for review* [promptly after receiving such notice]. Any such written *request for review* [rejection] shall be given to the *Floor Official and* specialist by a member, not by a clerk. *The transaction may only be rejected upon written Floor Official approval for good cause shown in relation to the specialist's responsibility to maintain a fair and orderly market.* Any transaction not rejected in this manner shall be deemed accepted.

* * * * *

(b) Not applicable.

(c) Not applicable.

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 Exchange 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Since at least 1926, the Amex has had rules that allow specialists to act as both agent and principal on trades, but permit the brokers that placed the orders to reject the resulting contracts.[5] Such rules always have required (i) a report advising the member that gave-out the order that the specialist acted as principal on the trade, and (ii) an opportunity for the member that gave-out the order to reject the contract. The genesis of the Amex and similar New York Stock Exchange (''NYSE'') rules[6] goes back to the turn of the century and traditional concepts of agency law that an agent cannot deal for its account against its principal absent the principal's consent.

There have been many changes in the securities market since the early part of this century. Of particular importance, the dissemination of information regarding trades and quotes is now nearly instantaneous and permits both market professionals and public investors to monitor the market and the quality of their executions. Brokers have developed sophisticated systems for reviewing execution quality in response to the Commission's statements on ''best execution'' of customer orders. The Exchange also has developed

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that Amex Rule 155 applies to all securities transactions on the Amex, revised and expanded its discussion of the rules of the other exchanges, and provided an example of what constitutes good cause for rescinding a trade. Letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Attorney, Division of Market Regulation, Commission, dated July 29, 1999 (''Amendment No. 1'').

[4] Amex Rule 155 generally applies to securities transactions on the Exchange. Amex Rule 950(a) specifically extends Rule 155 to options trading. The proposed rule change, accordingly, will apply to all securities trades effected on the Amex, including options. *See* Amendment No. 1, *supra* note 3.

[5] Section 1 of Chapter XI of the Rules of the New York Curb Exchange (a predecessor of the Amex) in the July 1926 ''Constitution of New York Curb Exchange and Rules Adopted by the Board of Governors Pursuant Thereto'' provides in part:

No regular member, while acting as a broker, whether as a specialist or otherwise, shall buy or sell, directly or indirectly, for his own account or for that of a partner, or for any account in which either he or a partner has a direct or indirect interest, securities, the order for the sale or purchase of which has been accepted for execution by him, or by his firm, or by a partner, except as follows: . . .

[Exception (b)]. A regular member may only take the securities named in the order, provided that he shall have offered the same in the open market, if bonds at ⅛ of 1%, and if stocks at the minimum fraction of trading, above his bid, and provided that the price is justified by the conditions of the market, and that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it.

[Exception (c)]. A regular member may only supply the securities named in the order, provided that he shall have bid for the same in the open market, if bonds at ⅛ of 1%, and if stocks at the minimum fraction of trading, below his offer, and provided that the price if justified by the conditions of the market, and that the member who gave the order shall directly, or through a broker authorized to act for him, after prompt notification, accept the trade and report it.

[6] The NYSE has a rule similar to Amex rule 155. *See* Amendment No. 1, *supra* note 3 (interpreting rules of other exchanges).