and numerous direct and indirect non-utility subsidiaries, including EWGs. TXU Holdings asserts that the requirements for an exemption under section 3(a)(1) of the Act are met because TXU Holdings and Oncor, its only public-utility subsidiary, are both incorporated in Texas, the state in which Oncor conducts all of its public-utility operations.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03–912 Filed 1–15–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–14127]**

### Issuer Delisting; Notice of Application to Withdraw from Listing and Registration on the Chicago Stock Exchange, Inc. (United Financial Mortgage Corporation, Common Stock, no par value)

January 10, 2003.

United Financial Mortgage Corporation, an Illinois corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'').

The Issuer states in its application that it has met the complied with the requirements of the CHX Article XXVIII, Rule 4, by complying with Exchange's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On October 15, 2002, the Board of Directors of the Issuer approved a resolution to withdraw the Company's Security from listing on the CHX. The Board states that the following reasons factored into its decision to withdraw the Security from listing and registration on the CHX: (i) The Issuer's Security began trading on the American Stock Exchange LLC (''Amex'') on September 9, 2002, and (ii) the Issuer believes that listing on the Amex will provide greater visibility for its Security. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and shall have no effect upon its continued listing and registration on the Amex under section 12(b) of the Act.[3]

Any interested person may, on or before February 3, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–954 Filed 1–15–03; 8:45 am]

**BILLING CODE 8010–01–U**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25886; 813–296]**

### Evergreen Ventures LLC, et al.; Notice of Application

January 10, 2003.

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

**ACTION:** Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

**SUMMARY:** Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Pillsbury Winthrop LLP and its affiliates from certain provisions of the Act. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

**APPLICANTS:** Evergreen Ventures LLC (the ''Investment Fund'') and Pillsbury Winthrop LLP (together with any entity that results from a reorganization of Pillsbury Winthrop LLP into a different type of business organization or into an entity organized under the laws of another jurisdiction, the ''Firm'').

**DATES:** The application was filed on September 1, 2000, and amended on January 22, 2001, and January 9, 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 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, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 50 Fremont Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942–0582, or Nadya B. Roytblat, Assistant Director, 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 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

#### Applicants' Representations

1. The Firm is a law firm organized as a Delaware limited liability partnership. The Firm and its ''affiliates,'' as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), are referred to collectively as the ''Pillsbury Group'' and individually as a ''Pillsbury Entity.'' The Firm's equity owners are partners (''Partners'').

2. The Investment Fund is a Delaware limited liability company established pursuant to a limited liability company agreement. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund, other than investment objectives and strategies (the ''Subsequent Funds,'' and together with the Investment Fund, the ''Funds''). The applicants anticipate

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a limited partnership, corporation, trust or other business organization formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Partners and certain attorney and non-attorney employees of Pillsbury Group to participate in certain investment opportunities that come to the attention of Pillsbury Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. The Firm will serve as the sole manager (the ''Manager'') of the Funds. The Funds will have one or more investment committees (''Investment Committees''), each member of which shall be a current Partner. The Manager will appoint the members of each Investment Committee. The Manager or any person involved in the operation of the Funds will register as investment advisers if required under the Investment Advisers Act of 1940 (the ''Advisers Act''), or the rules under the Advisers Act.

4. Interests in the Funds (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of ''Eligible Employees,'' ''Qualified Investment Vehicles,'' ''Immediate Family Members,'' each as defined below, and Pillsbury Entities. The term ''Fund Investors'' refers to Eligible Investors who invest in the Funds. Prior to receiving a subscription agreement from an individual, the Manager must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An ''Eligible Employee'' is a person who is, at the time of investment, a current or former Partner or an employee of Pillsbury Group who (a) meets the standards of an ''accredited investor'' set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer Partners or employees of Pillsbury Group who meets certain salary and other requirements (''Category 2 investors''), or (c) is a lawyer employed by the Firm who purchases Interests pursuant to an offering under rule 701 under the Securities Act (''rule 701'') (''Category 3 investors'').

5. Each Category 2 investor will be a Partner or employee of Pillsbury Group who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a graduate degree, has a minimum of 3 years of business and/or professional experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a ''Covered Company'' for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by the Firm who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Partner will not be permitted to invest in any calendar or fiscal year (as determined by the Firm) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. 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 an independent third party (''Financial Consultant'') qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker. An Immediate Family Member who purchases Interests must be an accredited investor as defined in rule 501(a)(5) or rule 501(a)(6) of Regulation D.

8. Each Fund may issue its Interests in series (each, a ''Series'' and collectively, the ''Series'') with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a ''Class''), having such terms and conditions as the Manager may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the ''Investment Period''). Following the end of a Series' Investment Period, no new investment commitments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period (and, if necessary, periodically thereafter), the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the ''Regulation D Investors''), 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 for that Series from those Eligible Investors investing pursuant to rule 701 (the ''rule 701 Investors''). The capital contributions and commitments of the rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. No more than approximately 13% (*i.e.*, 15%

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. The Firm or the Manager may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private offering memorandum of the Fund, and each Eligible Investor will receive a private offering memorandum and the Fund's limited liability company agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Fund Investors will be permitted to transfer their Interests only with the express consent of the Manager. Any such transfer must be to another Eligible Investor. No fee of any kind will be charged in connection with the sale of Interests.

12. If any Fund Investor leaves the Firm during the Investment Period for a Series, the Manager may, in its sole discretion, repurchase his or her Interests in that Series as follows:

a. If a Fund Investor leaves the Firm less than one year following the date that Fund Investor's investment is accepted, the Manager will have 90 days to repurchase such Fund Investor's Interests (or cancel indebtedness) at the paid-in investment amount (less distributions) and without interest.

b. If a Fund Investor leaves the Firm one year or more following the date that Fund Investor's investment is accepted, the Manager will repurchase the Fund Investor's Interests (or cancel indebtedness) at fair value determined either (1) as of the Fund Investor's last date of association or employment with the Firm, or (2) as of the next date of valuation of the Series. Payment will be made within 90 days of the date on which the fair value of the Fund Investor's Interests is determined.

13. The Manager may require a Fund Investor to withdraw from a Fund if: (a) A Fund Investor ceases to be an Eligible Investor; (b) a Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; (d) the continued membership of the Fund Investor would violate applicable law or regulations; or (e) the Manager, in its sole discretion, deems such withdrawal in the best interest of the Fund. These withdrawal policies apply (a) during the Investment Period, with respect to Fund Investors who have not left the Firm, and (b) after the Investment Period, with respect to any Fund Investor.

14. The Firm reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time or may be based on certain performance milestones (such as admission of an associate lawyer as a Partner of the Firm). During the Investment Period, vested and unvested Interests will be subject to the provisions discussed above governing Fund Investors who leave the Firm during the Investment Period. Thereafter, a Fund Investor's Interests that are or become vested will not be subject to repurchase except to the extent that the Manager determines to require the withdrawal of that Fund Investor as discussed above. It is anticipated that the Manager rarely will require such withdrawal. Following the Investment Period, any portion of a Fund Investor's Interests that are unvested at the time of termination of a Fund Investor's employment with the Firm (or at the time of that Fund Investor's failure to achieve the relevant performance milestone) are subject to repurchase or cancellation. The decision to repurchase a Fund Investor's Interests will be made on a case-by-case basis by the Manager.

15. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the Manager) and (b) the fair value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the Manager. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

16. The Firm may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Firm's operating expenses to a Fund. In addition, the Firm may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the Manager, and no compensation will be paid by a Fund or by Fund Investors currently employed by Pillsbury Group to the Manager for its services. The Manager may impose a fixed fee or a management fee, in either case not to exceed one percent of the value of the Interests held by any Fund Investor. Such a fee will be charged only to a person who becomes a former employee or Partner of Pillsbury Group and any Qualified Investment Vehicle associated with that Fund Investor.

17. The Funds may borrow from Pillsbury Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse other than to the Pillsbury Group. If a Pillsbury Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

18. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

**Applicants' Legal Analysis**

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a)

by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Firm or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Firm or any affiliated person thereof; (b) sell, to the Firm or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Firm or any affiliated person thereof; and (d) purchase interests in any company or other investment vehicle (i) in which the Firm owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Firm.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Eligible Investors will be informed in the Fund's private offering memorandum of the possible extent of the Fund's dealings with the Firm or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and the Firm will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Firm or its affiliated person, or another Fund, is a participant, or with respect to which the Firm or an affiliated person of the Firm is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Firm; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, the Firm or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Firm's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Firm, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Firm or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the Firm will be deemed employees of the Funds, (ii) officers of the Manager and the Manager will be deemed to be officers of the Fund, and (iii) the Manager will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Firm. Applicants assert that the securities held by the Funds are most suitably kept in the Firm's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons (''disinterested directors'') take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g). Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that investment companies relying on this exemption have a majority of disinterested directors, that those disinterested directors select and nominate any other disinterested directors, and that any legal counsel for those disinterested directors be independent.

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the

extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such actions and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the Manager take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Manager will be an interested person of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Manager will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agrees that all such material will be subject to examination by the Commission and its staff. The Manager will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market for Interests and transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

**Applicants' Conditions**

The applicants agree that any order granting the requested relief will be subject to the following conditions:

*Fund Operations*

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a ''section 17 Transaction'') will be effected only if the Manager determines that: (a) The terms of the section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Manager will record and preserve a description of such section 17 Transactions, its findings, the information or materials upon which its findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least two years thereafter, and 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.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Pillsbury Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Manager will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor. The term ''Co-Investor'' with respect to any Fund means any person who is (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Pillsbury Group; (c) a Partner, lawyer, or employee of the Pillsbury Group; (d) an investment vehicle offered, sponsored, or managed by the Firm or an affiliated person of the Firm; or (e) an entity in which a Pillsbury Entity acts as a general partner, or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment

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.*

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**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'').