widespread ''switching'' operations in the 1930s prior to adoption of the Act. Applicants assert that the legislative history of Section 11 makes it clear that the potential for harm to investors perceived in switching was its use to extract additional sales charges from those investors. Accordingly, according to Applicants, applications under section 11(a) and orders granting those applications appropriately have focused on sales loads or sales load differentials and administrative fees to be imposed for effecting a proposed exchange and have ignored other fees and charges, such as relative advisory fee charges of the exchanged and acquired securities.

6. Rule 11a–2, adopted in 1983 under Section 11 of the Act, by its express terms, provides blanket Commission approval of certain offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Rule 11a–2 permits variable annuity exchanges as long as the only variance from a relative net asset value exchange is an administrative fee disclosed in the registration statement of the offering separate account, and a sales load or sales load differential calculated according to methods prescribed in the rule. Variable life insurance exchanges may vary from relative net asset exchanges only by reason of disclosed administrative fees; no sales loads or sales load differentials are permitted under the rule for such exchanges. Applicants note, however, that there is language in the adopting release for Rule 11a–2 that suggests that the rule may have been intended to permit exchanges for funding options within a single variable life insurance contract, but not the exchange of one such contract for another.

7. Given the terms of the exchange offer, Applicants do not meet the specific requirements of Rule 11a–2. Applicants note, however, that the surrender charge schedule under the existing Scheduled Premium Contracts was designed to cover the costs associated with the original sales of those contracts. If the sales charge structure under the Exchanged Zenith 2001 Contract is applied to the cash value transferred under the exchange, then some contract owners may exchange their Scheduled Premium Contracts with the intent to then surrender the Exchanged Zenith 2001 Contract and incur no or a lower surrender charge. Accordingly, NELICO has modified the surrender charge schedule applicable to the Exchanged Zenith 2001 Contracts to discourage owners of Scheduled Premium Contracts being exchanged from exchanging their contracts solely to avoid or significantly reduce the applicable surrender charges.

8. Adoption of Rule 11a–3 under the Act, permitting certain exchange offers by open-end investment companies other than separate accounts, represents the most recent Commission action under section 11 of the Act. Rule 11a–3 permits an offering company (that is an open-end management company) to charge exchanging security holders a sales load on the acquired security, a redemption fee, an administration fee, or any combination of the foregoing, provided that certain conditions are met. As with Rule 11a–2, Rule 11a–3 focuses primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Because the investment company involved in the proposed exchange is a separate account, and because the investment company is organized as a unit investment trust rather than as a management investment company, Applicants may not rely on Rule 11a–3.

9. Applicants submit that the terms of the exchange offer are, nevertheless, consistent with the legislative intent of section 11, and that the exchange has not been proposed solely for the purpose of exacting additional selling charges and profits from investors by switching them from one security to another. In support of this contention, Applicants note the following:

- No additional sales load or administrative charge will be imposed at the time of exchange. The contract value and face amount of a contract acquired in the proposed exchange (*i.e.*, the Exchanged Zenith 2001 Contract) will be no lower immediately after the exchange than that of the contract exchanged (*i.e.*, a Scheduled Premium Contract) immediately prior to the exchange (unless a loan is repaid by applying a portion of the surrender proceeds at the time of the exchange).
- Although the surrender charges applicable under the Exchanged Zenith 2001 Contract will differ from the surrender charges imposed under Zenith 2001 Contracts, NELICO will ''tack'' the time the contract owner owned the Scheduled Premium Contract for purposes of calculating the surrender charge period under the Exchanged Zenith 2001 Contract, in accordance with the requirements of Rule 11a–2 and Rule 11a–3 under the Act. Surrender charges will be waived entirely on Exchanged Zenith 2001 Contracts issued in exchange for Zenith Life Contracts. In addition, the shorter (11-year) surrender charge period applicable under the Exchanged Zenith 2001 Contract will relieve many Scheduled Premium Contract owners of several remaining years of surrender charges as a result of the exchange. Moreover, the surrender charges under the Exchanged Zenith 2001 Contracts will be the same as or lower than those that would apply under the Scheduled Premium Contracts that are exchanged for Zenith 2001 Contracts.
- Contract owners will receive sufficient information to determine which contract best suits their needs.

10. Applicants assert that permitting contract owners to evaluate the relative merits of the exchange offers and to select the contract that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Accordingly, according to applicants, not only is the exchange offer consistent with the protections afforded by section 11 of the Act and the rules promulgated thereunder, but approval of the terms of the exchange offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Conclusion

For the reasons summarized above, Applicants represent that: (i) The proposed exchange offer is consistent with the intent and purpose of Section 11 of the Act and the protection of investors and the purposes fairly intended by the policy and provisions of the Act; and (ii) the terms of the proposed exchange are ones that may properly be approved by an order issued by the Division of Investment Management pursuant to delegated authority.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1990 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26838; 812–13182]

The PNC Financial Services Group, Inc., et al.; Notice of Application

April 21, 2005.

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

ACTION: Notice of application for a permanent order under section 9(c) of

the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Applicants request a permanent order exempting them and any other company of which Riggs Bank N.A. (''Riggs Bank''), or its successors, is or hereafter becomes an affiliated person from section 9(a) of the Act, with respect to a plea agreement entered into on January 27, 2005 between Riggs Bank and the U.S. Attorney for the District of Columbia and the U.S. Department of Justice.

Applicants: The PNC Financial Services Group, Inc. (''PNC''); BlackRock, Inc. (''BlackRock, Inc.''); BlackRock Financial Management, Inc. (''BlackRock Financial''); BlackRock International, Ltd. (''BlackRock International''); BlackRock Advisors, Inc. (''BlackRock Advisors''); BlackRock Institutional Management Corporation (''BlackRock Institutional''); BlackRock Capital Management, Inc. (''BlackRock Capital''); State Street Research & Management Company (''State Street''); J.J.B. Hilliard, W.L. Lyons, Inc. d/b/a Hilliard Lyons (''Hilliard Lyons''); PFPC Distributors, Inc. (''PFPC''); BlackRock Distributors, Inc. (''BlackRock Distributors''); Northern Funds Distributors, LLC (''Northern Funds''); and ABN AMRO Distribution Services (USA), Inc. (''ABN'') (collectively, the ''Applicants'').

Filing Date: The application was filed on April 6, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 12, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Drew J. Pfirrman, The PNC Financial Services Group, Inc., 249 Fifth Avenue, 21st Floor, Pittsburgh, PA 15222, and Richard Prins, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 551–6815, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a 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) 551–8090).

Applicants' Representations

1. PNC, a Pennsylvania corporation, is a diversified financial services company that operates through its subsidiaries in five major businesses engaged in regional community banking, wholesale banking, wealth management, asset management, and global fund processing. PNC's subsidiaries have approximately $354 billion of assets under management as of December 31, 2004. BlackRock, Inc., a Delaware corporation, is a majority-owned indirect subsidiary of PNC. BlackRock Advisors, BlackRock Financial, BlackRock Institutional, BlackRock International, BlackRock Capital, and State Street are each wholly-owned direct or indirect subsidiaries of BlackRock, Inc. BlackRock Advisors, BlackRock Financial, BlackRock Institutional, Blackrock International, BlackRock Capital, and State Street are registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and provide investment advisory services to registered investment companies (''Funds'').

2. Hilliard Lyons, a wholly-owned indirect subsidiary of PNC, is a full service investment firm that is registered under the Advisers Act and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). Hilliard Lyons provides investment advisory services and serves as principal underwriter for two open-end Funds. PFPC, a Massachusetts corporation, is a wholly-owned indirect subsidiary of PNC. BlackRock Distributors, ABN (both Delaware corporations), and Northern Funds (a Wisconsin limited liability company), each a wholly-owned direct subsidiary of PFPC, are registered as broker-dealers under the Exchange Act and serve as principal underwriters for various open-end Funds.

3. On February 10, 2005, PNC and Riggs National Corporation (''Riggs National''), a Delaware corporation and parent of Riggs Bank, entered into a merger agreement (the ''Merger Agreement''). Under the terms of the Merger Agreement, Riggs National will merge into PNC on May 13, 2005 (''Merger''). Concurrently with the Merger, PNC Bank will acquire the assets and assume substantially all of the liabilities of Riggs Bank. Following the Merger, Riggs Bank either will be liquidated or merged into a non-bank subsidiary.

4. On January 26, 2005, the United States Attorney for the District of Columbia (the ''U.S. Attorney'') filed an information (the ''Information'') in the United States District Court for the District of Columbia alleging that from at least March 1999 through December 2003 Riggs Bank failed to file timely or accurate suspicious activity reports (''SARs'') in violation of the Bank Secrecy Act. On January 27, 2005, the U.S. Attorney and the U.S. Department of Justice and Riggs Bank entered into a plea agreement (the ''Plea Agreement''), under which Riggs Bank pled guilty to a single count of failing to file timely or accurate SARs.[1] Riggs Bank agreed to pay a $16 million fine and agreed to a five-year period of corporate probation, which will terminate immediately upon the closing of a sale of Riggs Bank or any other change-of-control transaction. The individuals at Riggs National and at Riggs Bank who were identified as being responsible for the conduct underlying the Plea Agreement have either resigned or have been terminated.

Applicants' Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company or registered unit investment trust, if such person within ten years has been convicted of any felony or misdemeanor arising out of such person's conduct, as, among other things, a bank. Section 2(a)(10) of the Act defines the term ''convicted'' to include a plea of guilty. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company any affiliated person of which is disqualified under the provisions of section 9(a)(1). ''Affiliated person'' is defined in section 2(a)(3) of the Act to include, among

[1] In addition to the Plea Agreement, Riggs Bank was directly and indirectly subject to several other government actions related to the conduct that led to the filing of the Information. See *In re Riggs Bank Nat'l Assn*, No. 2003–79 (July 16, 2003), *In re Riggs Bank N.A.*, No. 2004–43, AA–EC–04–54 (May 13, 2004), *In re Riggs Bank N.A.*, No. 2004–44, AA–EC–04–55 (May 13, 2004), *In re Riggs Bank N.A.*, No. 2005–1, AA–EC–04–54 (Jan. 27, 2005), *In re Riggs Bank N.A.*, No. 2004–1 (May 13, 2004) and *In re Riggs Nat'l Corp.*, Nos. 04–011–B–HC & 04–011–B–EC (May 14, 2004).

others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Sections 9(a)(1) and 9(a)(3) would, upon the closing of the Merger, have the effect of precluding the Applicants, and any other company of which Riggs Bank is or during the next ten years becomes an affiliated person, from serving as investment adviser, depositor or a principal underwriter for any Funds.

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) of the Act if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the conduct of the applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. In light of the Plea Agreement and the Merger Agreement, Applicants seek an order exempting them and any other company of which Riggs Bank, or its successors, is or hereafter becomes an affiliated person (together with the Applicants, the ''Covered Persons'') from the provisions of section 9(a) of the Act with respect to the Plea Agreement.

3. Applicants state that the prohibitions of section 9(a), as applied to the Covered Persons, would be unduly and disproportionately severe and that it would not be against the public interest or the protection of investors to grant an exemption from section 9(a). Applicants state that prohibiting them from providing services to the Funds would not only adversely affect their businesses, but also their employees. Applicants state that neither they nor any of their current or former officers, directors or employees had any involvement in the conduct underlying the Plea Agreement. All of the conduct occurred and ceased before the Merger Agreement, when the Applicants had no affiliation with the parties to the Plea Agreement. Following the Merger, no former employee of Riggs Bank who previously has been or who subsequently may be identified by PNC or any federal or state agency or court as having been responsible for the conduct underlying the Plea Agreement will be an officer, director or employee of any of the Applicants or any of the other Covered Persons. Applicants assert that the provisions of section 9(a) should not apply to the Applicants, who have taken no part in the misconduct underlying the Plea Agreement and are subject to section 9(a) solely because of the Merger Agreement.

4. Applicants have distributed, or 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 for which Applicants provide services as investment adviser or principal underwriter, including the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the Act, if any, regarding the Plea Agreement and the reasons applicants believe relief pursuant to section 9(c) is appropriate. Applicants undertake to provide the Funds with all the information concerning the Plea Agreement and the application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws. Applicants also state that they have not previously applied for an exemption pursuant to section 9(c) of the Act.

Applicants' Condition

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

Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of Riggs Bank who previously have been or who subsequently may be identified by PNC or any federal or state agency or court as having been responsible for the conduct underlying the Plea Agreement, in any capacity, without first making further application to the Commission pursuant to section 9(c) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1988 Filed 4–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Weida Communications, Inc., File No. 500–1; Order of Suspension of Trading

April 25, 2005.

It appears to the Securities and Exchange Commission (''Commission'') that the public interest and the protection of investors require a suspension of trading in the securities of Weida Communications, Inc. (''Weida'') because of concerns regarding potentially manipulative transactions in Weida's common stock by certain individuals associated with the company and others.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities of the above-listed company.

Therefore, *it is ordered,* pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, issued by Weida, is suspended for the period from 9:30 a.m. E.D.T. on April 25, 2005 and terminating at 11:59 p.m. E.D.T. on May 6, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–8515 Filed 4–25–05; 1:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51591: File No. SR–Amex–2005–027]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the Use of Certain Consolidated Tape Association Financial Status Indicator Fields and Related Disclosure Obligations

April 21, 2005.

On February 25, 2005, the American Stock Exchange LLC (''Amex'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the use of certain Consolidated Tape Association financial status indicator fields and related disclosure obligations. The Commission published the proposed rule change for comment in the **Federal Register** on March 21, 2005.[3] On March 25, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[4] The Commission did not receive any comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 51367 (March 14, 2005), 70 FR 13555.

[4] Amendment No. 1 made technical changes to the proposed rule change and does not require notice.