

Insurance Company of New York Separate Account E, and the correct application amendment date of July 18, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23435 Filed 9-19-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Agency Meeting

*Federal Register Citation of Previous Announcement:* [65 FR 47251, September 11, 2001].

*Status:* Closed meeting.

*Place:* 450 Fifth Street, NW, Washington, DC.

*Date Previously Announced:* [September 6, 2001].

*Change in the Meeting:* Additional items.

*The following item was added to the closed meeting scheduled for Friday, September 14, 2001:* regulatory matters regarding financial institutions.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

Dated: September 14, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-23523 Filed 9-17-01; 4:46 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 17, 2001: A closed meeting will be held on Friday, September 21, 2001, at 10:00 a.m.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Friday, September 21, 2001, will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and a formal order.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: September 18, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23707 Filed 9-18-01; 3:50 pm]

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## SECURITIES AND EXCHANGE COMMISSION

**[Securities Exchange Act of 1934 Rel. No. 44797]**

### Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond To Market Developments Concerning the American Stock Exchange LLC

September 16, 2001.

The United States securities markets are the world's strongest and most vibrant. The Commission has full confidence that the attacks of September 11, 2001, will have little lasting impact. To that end, the Commission seeks to serve investors and the markets through all available means to facilitate the reopening of fair and orderly markets.

Some of the nation's securities exchanges may have incurred physical damage or disruption that require relocation of trading facilities and personnel to another suitable physical location. The American Stock Exchange LLC ("Amex"), in particular, has reported that it is not yet able to occupy its trading floor. Amex anticipates that its electronic order routing systems will function as they did before September 11, 2001. However, due to the severe damage to the infrastructure

surrounding its building, Amex will relocate part of its operations to the floor of the New York Stock Exchange ("NYSE"). Because there is limited space available at the NYSE, Amex will operate with limited staffing. As a result, specialists will have to serve as floor brokers while performing their usual functions.

Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act") grants the Commission the authority, in the event of certain major market disturbances, to issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission. Section 11(a) of the Exchange Act prohibits a member of a national securities exchange from effecting transactions for its own account, the account of an associated person, or an account with respect to which it or an associated person has investment discretion unless an exemption applies. Section 11(b) of the Exchange Act requires a national securities exchange to adopt rules to permit a member to register as a specialist. Section 11(b) of the Exchange Act also prohibits a specialist permitted to act as a broker and dealer to effect on the exchange as a broker any transaction except upon a market or limited price order. Because Amex specialists do not generally act as floor brokers, the Amex rules that govern specialists contain certain restrictions that, unless modified, would impair the ability of Amex specialists to act as floor brokers.

Based on all available information, the Commission has determined that:

(1) Amex's inability to trade on its own floor due to the physical damage to the infrastructure surrounding its premises constitutes a major market disturbance characterized by a substantial threat of sudden and excessive fluctuations of securities prices that threaten the nation's fair and orderly markets.<sup>1</sup>

(2) Ensuring that all national securities exchanges are able to operate provides an important source of liquidity during times of market volatility. Facilitation of the resumption of trading at all of the nation's exchanges is necessary in the public interest and for the protection of investors.

(3) Because space limitations will require Amex personnel to act both as specialists and floor brokers, including

<sup>1</sup> This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation.

handling certain large orders over which they have investment discretion, the specialists may not be able to comply with Amex rules for specialists adopted in conformance with Section 11(b). They also may not be able to comply with the restrictions of Sections 11(a) or 11(b) with respect to these discretionary orders.<sup>2</sup> Accommodating this trading, as a temporary measure, is in the public interest and for the protection of investors in order to maintain or restore fair and orderly securities markets.

Therefore, It Is Ordered, pursuant to Section 12(k)(2) of the Exchange Act, that:

Amex specialists shall be temporarily exempt from Section 11(a) solely for effecting transactions when acting as floor brokers for Amex orders on the floor of the NYSE for accounts in which they have investment discretion provided that,

1. the specialist's discretion, when acting as a floor broker, is limited to time and price discretion of the type exercised by floor brokers on the Amex floor prior to September 11, 2001 pursuant to Amex rules;

2. such discretionary orders to be executed by the Amex specialist acting as a floor broker exceed 50,000 shares; and

3., Amex floor officials take reasonable steps to ensure that the specialist meets its agency obligations and does not disadvantage the customers for which it acts as a floor broker;

It Is Further Ordered, That,

Amex specialists shall be temporarily exempt from Section 11(b) solely for effecting transactions as described above;

It Is Further Ordered, That,

The Amex shall be temporarily exempt from Section 11(b) to permit its specialists to effect transactions as described above.

This order shall be effective with respect to the five business days beginning on the date of the first reopening of trading on the U.S. equities and options markets after September 11, 2001.<sup>3</sup>

<sup>2</sup> While our authority to supplement Exchange Act Sections 11(a) and 11(b) in this context is derived from the Exchange Act, we acknowledge that our action will affect the application of other provisions of the securities laws that require compliance with Sections 11(a) and 11(b). Terms used in this Order have the same meanings as those terms used in Sections 11(a) and 11(b).

<sup>3</sup> The Commission has authority under Section 36 of the Exchange Act to exempt, by order, persons from the requirements of Sections 11(a) and 11(b) of the Exchange Act. Due to exigent circumstances, the procedures for such exemptions established by the Commission under Section 36(b) of the Exchange Act have not yet been followed. The

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 44791]

### Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

September 14, 2001.

The United States securities markets are the world's strongest and most vibrant. The Commission has full confidence that the attacks of September 11, 2001, will have little lasting market impact. To that end, the Commission seeks to serve investors and the markets through all available means to facilitate the reopening of fair and orderly markets.

Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act") grants the Commission the authority, in the event of certain major market disturbances, to issue summarily order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission. On September 11, 2001, the U.S. equities and options markets determined not to open in light of the attacks that morning. The U.S. equities and options markets have remained closed since then. Based on all available information, the Commission has determined that:

(1) Uncertainty concerning the impact of the closure of the U.S. equities and options markets constitutes a major market disturbance characterized by "sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threatens fair and orderly markets."<sup>1</sup> In particular, the Commission seeks to ensure that, when the U.S. equities and options markets reopen for trading, they will not be confronted with undue order imbalances.

(2) Purchases by registrants of their own securities can represent an

Commission expects that, if necessary, within the period of this order, it could issue a Section 36 order, with appropriate findings and conditions, to provide similar exemptions from Sections 11(a) and 11(b) until the Amex obtains its own space.

<sup>1</sup> This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation.

important source of liquidity during times of market volatility. Registrants may be reluctant to engage in such purchases, however, because of certain securities law requirements. In particular, Exchange Act Rule 10b-18 provides registrants with a safe harbor to effect repurchases, but only if the repurchases meet the conditions specified in the Rule. Certain registrants that recently engaged in or initiated business combinations that otherwise qualify for pooling-of-interests treatment under generally accepted accounting principles also may be reluctant to effect repurchases. In this regard, Regulation S-X, Article 4 (Rules of General Application), Part 4-01, provides in pertinent part that, "Financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided."

(3) The Commission understands that some registrants may have internal policies relating to purchases of the registrant's securities during specific time periods. These policies are designed to prevent violations of the antifraud provisions of the federal securities laws. While the antifraud provisions remain in effect, a registrant's failure to comply with those timing policies for purchases by the registrant of its securities during the period covered by the Order will not by itself be considered as any indication that the registrant may have violated the antifraud provisions. In addition, certain persons may refrain from purchase activity that otherwise serves the public interest because of concern about potential profit recovery under Section 16(b) of the Exchange Act.

(4) Temporary action with respect to the conditions of Rule 10b-18, the application of Article 4 of Regulation S-X,<sup>2</sup> and the operation of certain other provisions of the federal securities laws will provide additional flexibility and certainty to registrants and others that consider engaging in purchases of securities when the U.S. equities and options markets reopen for trading. Accordingly, these temporary measures are in the public interest and for the protection of investors in order to maintain or restore fair and orderly securities markets.

<sup>2</sup> While our authority to supplement Regulation S-X in this context is derived from the Exchange Act, we acknowledge that our action will affect filings under other provisions of the securities laws that require filings to be in compliance with Regulation S-X.