8. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17–d provides that the SEC will consider whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicant asserts that the Eligible Trustees will neither directly nor indirectly receive benefits that would otherwise inure to Acorn or its shareholders because (a) a Fund may choose to invest in Shares, (b) amounts credited to the Deferral Account will be adjusted to reflect income, gains, and losses relating to the investment of the assets of such Fund, and (c) such income, gains, or losses will be identical to what any shareholder in that Fund would receive whose shares were not subject to the Plan. Applicants contend that deferral of an Eligible Trustee's compensation in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the compensation were paid on a current basis and then invested in the Shares.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31620 Filed 12–2–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22912; 812–10348]

AFC (USA) I, Inc.; Notice of Application

November 26, 1997.

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

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

SUMMARY OF THE APPLICATION: Applicant, AFC (USA) I, Inc., requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, Airbus Finance Company Limited.

FILING DATES: The application was filed on November 13, 1996, and amended on July 17, 1997 and November 24, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1997, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Catharine Ennis, George's Dock House, 2nd Floor, International Financial Services Center, Dublin 1, Ireland.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549, (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation formed in July, 1996. All of applicant's outstanding voting securities are owned by Airbus Finance Company Limited (''AFC''). AFC, a limited liability company incorporated under the laws of Ireland, provides sales financing support to the customers of Airbus Industrie G.I.E. (''Airbus Industrie'').[1] AFC and Airbus Industrie are each owned indirectly by Aerospatiale S.N.I., Daimler-Benz A.G. (''Daimler-Benz''), British Aerospace plc (''BAe''), and Construcciones Aeronauticas S.A. (''CASA'').

2. Applicant was organized to engage in financing activities to provide funds for use in the operations of AFC. Applicant proposes to obtain funds through the offer and sale of its debt securities in the United States and European or other overseas markets, and to lend the proceeds to AFC.

3. Due to the nature of capital markets, applicant may, from time to time, issue securities in amounts in excess of the amounts required by AFC at any given time. However, at least 85% of the cash or cash equivalents raised by applicant will be loaned to AFC as soon as practicable, but in no event later than six months after applicant's receipt of the cash or cash equivalents. Amounts that are not loaned to AFC will be invested in government securities, securities of AFC or a company controlled by AFC (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), or debt securities which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act.

4. Any issuance of debt securities by applicant to the public in the United States will be unconditionally guaranteed by AFC as to the timely payment of principal, interest, and premium, if any (a ''Guarantee''). Guarantee will provide each holder of debt securities issued by applicant a direct right of action against AFC to enforce AFC's obligations under the Guarantee without first proceeding against applicant.

5. Until AFC has achieved a specified long-term debt rating at or above investment grade (the ''AFC Rating''), any debt securities issued by applicant to the public in the United States also will be unconditionally guaranteed on a separate basis by each of Aerospatiale S.N.I., Daimler-Benz, BAe, and CASA, or any additional or substitute indirect owner of AFC as to the timely payment of principal of, interest, and premium, if any, on the debt securities.

6. In the future applicant may obtain funds through the offer and sale of non-voting preferred stock. Applicant will guarantee such stock with a guarantee complying with rule 3a–5(a)(2) under the Act.

Applicant's Legal Analysis

1. Rule 3a–5 under the Act provides an Exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Rule 3a–5 is premised on the notion that it is appropriate to exempt a finance subsidiary from all provisions of the Act when the primary purpose of the finance subsidiary is to finance the business operations of its parent

[1] Applicant represents that AFC does not constitute a ''partnership'' or ''joint venture'' within the meaning of rule 3a–5(a)(4) under the Act and is substantially equivalent to a U.S. corporation for the purposes of rule 3a–5(b)(2) under the Act.

company or other subdiaries of its parent and when the purchaser of the finance subsidiary's securities ultimately looks to the parent and not to the finance subsidiary for repayment.[2] Rule 3a–5(b)(2)(i) defines ''parent company'' to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a) of Act.

2. AFC is not a ''parent company'' within the definition in rule 3a–5(b)(2)(i) because AFC meets the definition of investment company in section 3(a) of the Act and is excepted from that definition by section 3(c)(6) of the Act. Applicant, therefore, is unable to rely on rule 3a–5 and seeks an exemption from all provisions of the Act.

3. In the release adopting rule 3a–5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of an issuer exempted from the definition of investment company under section 3(c) of the Act, but only on a case-by-case basis upon an examination of all relevant facts.[3] According to the adopting release, the concern was that a company could be considered not an investment company under section 3(c) of the Act and still be engaged primarily in investment company activities.[4]

4. Section 6(c) of the Act provides, in pertinent part, that the SEC may, conditionally or unconditionally, exempt any person or class of persons from any provision or provisions of the Act 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. Applicant states that AFC is not engaged primarily in investment company activities, but that its principal activity is the provision of sales financing for Airbus Industrie customers. In addition, if AFC were itself to issue the securities that are to be issued by applicant and use the proceeds for its own purposes or advance them to its subsidiaries, AFC would not be subject to regulation under the Act. While AFC has chosen instead to use applicant as a financing vehicle, the Guarantee ensures that holders of applicant's securities will have direct recourse against AFC. Accordingly, applicant submits that the relief requested satisfies the section 6(c) standard.

Applicant's Condition

Applicant agrees that the order granting the requested relief shall be subject to the condition that:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except that AFC will not meet the portion of the definition of ''parent company'' in rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(6) of the Act and is engaged primarily, directly or through majority owned subsidiaries, in one or more of the businesses described in section 3(c)(5)(A) and/or section 3(c)(5)(B) of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31686 Filed 12–2–97; 8:45 am]

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[2] *See* Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a–5 under the Act).

[3] *Id.* at 49443.

[4] *Id.*

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (American Restaurant Partners, L.P., Class A Units of Limited Partnership Interests) File No. I–9606

November 26, 1997.

American Restaurant Partners, L.P. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the preambles and resolutions adopted by the general partners of the Company authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons for the proposed withdrawals, and the facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company considered the facts set forth below and determined that the withdrawal would be in the best interests of the holders of the Security.

The Company's decision to withdraw the Security from listing and registration on the Amex is based on a change in the federal income tax laws that will, effective January 1, 1998, subject the Company to taxation as a corporation if the Company's Security remains listed on the Exchange. Under a grandfather clause that expires December 31, 1997, the Company is sheltered from the Internal Revenue Code provisions which tax publicly traded limited partnerships as corporations. To avoid taxation as a corporation, the Company must immediately withdraw its Security from listing and registration on the Amex so that the Security is no longer traded on an established securities market by the end of 1997.

The Company has represented that it intends to establish a qualified matching service in accordance with Department of Treasury regulations so that holders of the Security may exchange their interests. The Company has further represented that it may put into effect a redemption and repurchase agreement to provide holders of the Security with another means for exchanging their interests.

The Company shall continue to send annual and quarterly reports containing financial statements to holders of the Security so long as it is obligated to do so under the Act.

By letter dated November 12, 1997, the Amex informed the Company that the Exchange has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

Any interested person may, on or before December 18, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange 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.