

The Wachovia Funds and The Wachovia Municipal Funds based on net asset value. All expenses incurred in connection with the reorganization were paid by Wachovia Bank, N.A., applicant's investment adviser.

**Filing Date:** The application was filed on September 14, 2000.

**Applicant's Address:** 3435 Stelzer Road, Columbus, Ohio 43219-3035.

**Dreyfus New York Insured Tax Exempt Bond Fund [File No. 811-4884]; and Dreyfus Asset Allocation Fund, Inc. [File No. 811-7710]**

**Summary:** Each applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 1999, Dreyfus New York Insured Tax Exempt Bond Fund transferred its assets to General New York Municipal Bond Fund, Inc., based on net asset value. On the same date, Dreyfus Asset Allocation Fund, Inc. transferred its assets to Dreyfus LifeTime Portfolios, Inc.—Growth and Income Portfolio, based on net asset value. Expenses of \$15,000 and \$35,000, respectively, incurred in connection with the reorganizations were paid by each applicant.

**Filing Date:** The applications were filed on August 24, 2000.

**Applicant's Address:** 200 Park Avenue, New York, New York 10166.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43371; File No. SR-Amex-00-43]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Its Rules To Require Companies to Publicly Disclose Receipt of a Delisting Notice

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its rules to require companies to publicly

disclose receipt of a written delisting notice frame the Exchange. On September 26, 2000, the Amex submitted Amendment No. 1 to the proposal to make certain technical modifications.<sup>3</sup> The proposal, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

It is currently the policy of the Exchange whenever delivering a delisting notice to a company whose securities trade on the Exchange to require the company to disclose the receipt of such delisting notice in a public announcement. The Exchange proposes to codify the requirements of this policy in its rules. Below is the text of the proposed rule change. Proposed new language appears in italics; proposed deletions appear in brackets.

\* \* \* \* \*

#### Sec. 401. OUTLINE OF EXCHANGE DISCLOSURE POLICIES

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following [six]seven specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a)-(f) No change.

(g) *Receipt of Written Delisting Notice—A company is required to publicly disclose that it has received a written notice indicating that the Exchange has determined to remove a company's securities from listing (or unlisted trading) as a result of non-compliance with the continued listing requirements. (See § 1010).*

#### Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES

(a)-(f) No change.

(g) *Receipt of Written Delisting Notice. Q. What kinds of information should be included in the public announcement?*

*A. The public announcement must indicate that the Exchange has determined to remove the company's securities from listing (or unlisted trading) and the reason(s) for the determination. In order to assist the company in the preparation of the public announcement, Exchange staff will provide the company with the Section(s) upon which its determination was based and a template for disclosure.*

*Q. When must the public announcement be made?*

*A. The public announcement must be made as promptly as possible, but no more than seven calendar days following the company's receipt of the written notice from the Exchange. The Exchange notes that companies should not construe the seven calendar day time frame as a safe harbor for disclosure.*

*Q. What steps must be taken before the public announcement is made?*

*A. The public announcement must be provided to Amex's StockWatch Department at (212) 306-8383 (phone), (212) 306-1488 (facsimile) and Listing Qualifications Department at (212) 858-5267 (phone), (212) 858-4780 (facsimile) prior to public dissemination.*

*Q. What action may the Exchange take if a company fails to make a public announcement indicating that the Exchange has determined to remove the company's securities from listing (or unlisted trading)?*

*A. Failure by a company to make the required public announcement will result in the institution of a trading halt in the company's securities until the announcement is made, even if the company appeals the determination as provided for under Section 1010. If the company fails to make the announcement by the time that the Adjudicatory Council issues its decision, that decision will also determine whether to delist the company's securities for failure to make the public announcement.*

*Q. Does Section 1010(b) relieve the company of its disclosure obligations under the federal securities laws?*

*A. No. Section 1010(b) does not relieve the company of its obligation to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. The Exchange suggests that the company consult with corporate/securities counsel in assessing its disclosure*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Michael J. Ryan, Senior Vice President, Chief of Staff, and Senior Legal Office, Amex, to Alton Harvey, Office Chief, Division of Market Regulation, Commission, dated September 20, 2000.

obligations under the federal securities laws.

\* \* \* \* \*

## Sec. 1010. DELISTING PROCEDURES

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (such as redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(a) No change.

(b) If, after such conference, the Exchange determines that the security should be removed, it will notify the company in writing, indicating the basis for such decision and the specific delisting policies and guidelines under which action will be taken. Such notice will also inform the company that it may appeal to the Board of Governors of the Exchange, or such committee or committees as the Board may authorize, and request a hearing. *A company shall make a public announcement through the news media that it has received such notice, including the specific policies and guidelines upon which the determination was based. Prior to the release of the public announcement, the company shall provide such disclosure to Amex's StockWatch and Listing Qualifications Departments.\* The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the written notice from the Exchange.*

(c)–(h) No change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange presently has a policy of requiring any company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose its receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of such a company.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of pending delisting should not only disclose the receipt of a written notice from the Exchange, but also indicate upon which section(s) of the Amex Company Guide the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions regarding the advisability of making or maintaining investments in the securities of such company. The Exchange additionally proposes that a company be required to make public its announcement regarding the pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company fails to disclose the receipt of a written delisting notice under the proposed requirement, trading of its securities shall be halted until the announcement has been made, even if the company appeals the underlying delisting determination as provided for under Section 1010. In this regard, the Exchange proposes that, if the company has failed to make the required announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether to delist the company's securities may also be based on the company's failure to make the public announcement.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, whose purpose is to ensure that investors be notified when the Exchange has determined to delist a company's securities for non-compliance with the continued listing guidelines, is consistent with the provisions of Section 6(b)(5) of the Act<sup>4</sup> which requires that an exchange have rules that are, in general, designed to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

\*Notification may be provided to Amex's StockWatch Department at (212) 306-8383 (telephone), (212) 306-1488 (facsimile), and Listing Qualifications Department at (212) 858-5267 (telephone), (212) 858-4780 (facsimile).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-00-43 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-25594 Filed 10-04-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43368; File No. SR-NASD-98-26]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 9 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

September 27, 2000.

On September 20, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Continue to suspend the current PMM standards until June 30, 2001; and (2) extend the NASD's Short Sale Rule pilot until June 30, 2001 ("Amendment No. 9").<sup>3</sup>

Amendment No. 9 to the proposed rule change, SR-NASD-96-28, is described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice and order to solicit comments on Amendment No. 9 from interested

persons and to approve the amendment on an accelerated basis.

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

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot and the suspension of the existing PMM standards from September 30, 2000 until June 30, 2001. The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

#### NASD Rule 3350

(a)-(k) No Changes.

(l) This Rule shall be in effect until [September 30, 2000] *June 30, 2001.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### (1) Background on the NASD's Short Sale Rule

Section 10(a) of the Exchange Act<sup>4</sup> gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a-1 of the Exchange Act.<sup>5</sup> On June 29, 1994, the Commission approved the NASD's short sale rule, Rule 3350 ("Short Sale Rule"), applicable to short sales<sup>6</sup> in Nasdaq

National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.<sup>7</sup> The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until September 30, 2000.<sup>8</sup>

Nasdaq's short-sale rule employs a "bid" test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. Nasdaq's short sale rule prohibits short-sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids on exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up-bid" or a "down-bid." To effect a "legal" short-sale on a down-bid, the short-sale must be executed at a price at least  $\frac{1}{16}$ th above the current inside bid. The rule is in effect from 9:30 a.m. E.T. until 4 p.m. E.T. each trading day.

To reduce the compliance burdens on its members, Nasdaq's short sale rule also incorporates seven exemptions contained in Rule 10a-1 under the Exchange Act that are relevant to trading on Nasdaq.<sup>9</sup> In addition, in an effort to not constrain the legitimate hedging needs of options market makers, the NASD's short sale rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

##### (2) Background on the NASD's Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is involved,

must adhere to the definition of a "short sale" contained in Rule 3b-3 of the Exchange Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

<sup>7</sup> See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order").

<sup>8</sup> See *supra*, note 3.

<sup>9</sup> See NASD Rule 3350(c)(2)-(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security, and that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Short Sale Rule, notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a-1 under the Exchange Act dealing with the liquidation of index arbitrage positions and an "international equalizing exemptions" are equally applicable to the NASD's short sale rule. See NASD Rule 3350(f).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4

<sup>3</sup> See letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission dated September 20, 2000. The current suspension and extension would expire on September 30, 2000. See Securities Exchange Act Release No. 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999).

<sup>4</sup> 15 U.S.C. 78j(a).

<sup>5</sup> 17 CFR 240.10a-1.

<sup>6</sup> A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members