

companies, and (c) consistent with the general purposes of the Act.

11. Applicants submit that the described in-kind redemption transaction is reasonable and fair. It is expected that policyowners will benefit from an in-kind redemption as proposed by virtue of the fact that the MML Fund will be able to acquire portfolio securities that are consistent with its objectives and policies without incurring (or lessening) any brokerage costs and, at the same time, the Dreyfus Fund will also save brokerage costs.

12. The transaction pursuant to which the substitution will be effected, including the possible redemption of shares of the Dreyfus Fund on an in-kind basis and the corresponding purchase of shares of the MML Fund, will be effected in conformity with section 22(c) of the Act and Rule 22c-1 thereunder. Policyowners will not incur any fees or charges as a result of the transfer of value pursuant to the substitution. Policyowners' rights and privileges and Applicants' obligations under the Policy thereunder will not be affected by the substitution. Expenses incurred in connection with the substitution, including legal, accounting, brokerage, and other expenses, will not be borne by policyowners. Policy values will remain unchanged and fully invested following the consummation of the substitution. Accordingly, policyowner interests after the substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the substitution. In each case, therefore, the consideration to be received and paid is reasonable and fair.

13. The investment objectives and policies of the MML Fund are substantially similar to the investment objectives and policies of the Dreyfus Fund. In this regard, the substitution is consistent with the findings required by section 17(b) of the Act.

14. The substitution is consistent with the general purposes of the Act as enunciated in the Findings and Declaration of Policy in section 1 of the Act. The proposed transaction does not present any of the issues or abuses that the Act is designed to prevent. Policyowners will be fully informed as to the terms of the substitution, as described above, and will have an opportunity to reallocate investments prior to and following the substitution.

15. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the substitution and an order of exemption pursuant to section 17(b) of the Act in connection with aspects of the substitution that may be deemed to be prohibited by Section

17(a), as described above. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted. Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application subject to certain conditions. Applicants represent that the proposed in-kind redemption transactions meet all of the requirements of section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

#### Applicants' Conclusion

Applicants assert that, for the reasons summarized above, the requested orders approving the substitution and exempting the in-kind transaction should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-1572 Filed 1-22-02; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25366; 812-12642]

#### Wells Fargo Funds Trust, et al.; Notice of Application

January 15, 2002.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

**SUMMARY OF APPLICATION:** The requested order would permit Wells Fargo Funds Trust ("Funds Trust") not to reconstitute its board of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo Funds Management, LLC ("Funds Management") to rely upon the safe harbor provisions of section 15(f).

**APPLICANTS:** Funds Trust and Funds Management.

**FILING DATES:** The application was filed on October 1, 2001 and amended on January 8, 2002.

**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 11, 2002, 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 may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, 525 Market Street, 12th Floor, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Sr., Senior Counsel, at (202) 942-0714, 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 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. Funds Trust is an open-end management investment company registered under the Act and consists of sixty-seven series ("Funds Trust Series"). Funds Management, a wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to sixty-two of the Funds Trust Series, and will serve as investment adviser to a newly created series (the "Successor Fund"). Funds Management is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The SIFE Trust Fund ("SIFE Fund") is an open-end management investment company registered under the Act. SIFE, a privately held company, serves as investment adviser to SIFE Fund and is registered under the Advisers Act.

2. On August 24, 2001, Wells Fargo and SIFE entered into an agreement providing for the acquisition of the outstanding shares of SIFE by Wells Fargo. The transaction is anticipated to

occur on February 22, 2002, which will cause SIFE to become an indirect wholly-owned subsidiary of Wells Fargo ("Acquisition"). Following the Acquisition, the Successor Fund will acquire the assets of SIFE Fund ("Reorganization"). Applicants state that the Acquisition will result in a change in control of SIFE within the meaning of section 2(a)(9) of the Act.

3. On August 7, 2001 and August 29, 2001, the respective boards of trustees (each a "Board") of Funds Trust and SIFE Fund unanimously approved the Reorganization. The Reorganization will require approval by a majority of the outstanding shares of SIFE Fund and SIFE Fund has scheduled a special meeting of the SIFE Fund's shareholders for January 31, 2002. Proxy materials for the special meeting were mailed to shareholders on or about November 15, 2001.

4. In connection with the Acquisition and the Reorganization, applicants have determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Reorganization, more than twenty-five percent of the Board of Funds Trust would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

#### **Applicants' Legal Analysis**

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions, set forth in section 15(f)(1)(A), provides that, for a period of three years after the sale, at least seventy-five percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Applicants state that, without the requested exemption, following the Reorganization, Funds Trust would have to reconstitute its Board to meet the seventy-five percent non-interested director requirement of section 15(f)(1)(A).

2. Section 15(f)(3)(B) of the Act provides that if the assignment of an investment advisory contract results from the merger of, or sale of substantially all of the assets by, a registered company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the Commission in determining whether, or to what extent,

to grant exemptive relief under section 6(c) from section 15(f)(1)(A).

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if 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.

4. Applicants request an exemption under section 6(c) of the Act from section 15(f)(1)(A) of the Act. Applicants state that, as of December 31, 2001, Funds Trust had approximately \$70 billion and SIFE Fund had approximately \$700 million in aggregate net assets, respectively, making SIFE Fund's assets approximately 1% of the aggregate net assets of Funds Trust.

5. Applicants state that three of the eight trustees who serve on the Board of Funds Trust are "interested persons," within the meaning of section 2(a)(19) of the Act, of Funds Management. Applicants state that none of the trustees who serves on the Board of Funds Trust is an interested person of the SIFE Fund or SIFE.

6. Applicants state that to comply with section 15(f)(1)(A) of the Act, Funds Trust would have to alter the composition of its Board, either by asking experienced trustees to resign or by adding new trustees. Applicants further state that adding new trustees could require a shareholder vote not only of shareholders of the Successor Fund, but also the shareholders of the sixty-seven Funds Trust Series not otherwise affected by the Reorganization. Applicants state that either of these solutions would be unfair to Funds Trust shareholders in view of the amount of the assets of SIFE Fund being acquired relative to the amount of assets of Funds Trust. Applicants state that adequate safeguards will be in place to protect the interest of the former shareholders of SIFE Fund following the consummation of the Reorganization. Applicants also assert that adding a substantial number of additional non-interested trustees to the Board of Funds Trust could entail a lengthy process, which could delay and increase the cost of the Reorganization, and make the Board unwieldy.

7. For the reasons stated above, applicants submit that the requested relief is necessary and 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.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-1573 Filed 1-22-02; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

### **Order of Suspension of Trading; New Energy Corporation**

January 18, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current, adequate and accurate information concerning the securities of New Energy Corporation of San Diego, California. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the value of certain power generation contracts, the existence and size of certain purchase orders for solar chips, and the status of New Energy's strategic partner's relationship with the Los Angeles Department of Water and Power.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the 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 the above listed company is suspended for the period from 9:30 a.m. EST, January 18, 2002, through 11:59 p.m. EST, on February 1, 2002.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 02-1734 Filed 1-18-02; 1:52 pm]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45257; File No. SR-NASD-2001-85]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Affirmative Determination Requirements for Short Sale Orders Received by Members From Non-Member Broker/Dealers**

January 9, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934