

8. Applicants represent that the Mergers are consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Mergers will result in no change to any Fund underlying the Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Mergers. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of the Allstate Life and Allstate New York Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by section 17(b).

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

[Investment Company Act Release No. 26392; 812-13035]

SPDR Trust, Series 1, et al.; Notice of Application

March 23, 2004.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The order would permit certain registered management investment companies and unit investment trusts to acquire shares of certain registered unit investment trusts that operate as exchange-traded funds and are outside the same group of

investment companies. The order also would amend three prior orders.

APPLICANTS: SPDR Trust, Series 1 ("SPDR Trust"), DIAMONDS Trust, Series 1 ("DIAMONDS Trust"), MidCap SPDR Trust, Series 1 ("MidCap SPDR Trust"), and PDR Services LLC ("PDR").

FILING DATES: The application was filed on October 31, 2003, and amended on March 17, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 April 16, 2004, 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: SPDR Trust, Series 1, c/o State Street Bank and Trust Company, 225 Franklin Street, Boston, MA 02110; DIAMONDS Trust, Series 1, c/o State Street Bank and Trust Company, 225 Franklin Street, Boston, MA 02110; MidCap SPDR Trust, Series 1, c/o The Bank of New York, 101 Barclay Street, New York, NY 10286; and, PDR Services LLC, c/o American Stock Exchange LLC, 86 Trinity Place, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

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. SPDR Trust, DIAMONDS Trust and MidCap SPDR Trust (together, the "Trusts") are unit investment trusts organized under New York law and registered under the Act. The SPDR Trust, DIAMONDS Trust and MidCap

SPDR Trust seek to provide investment results that closely track, respectively, the S&P 500 Composite Stock Price Index, Dow Jones Industrial Average and S&P MidCap 400 Index (each, an "Underlying Index," and together, the "Underlying Indices"). The Trusts operate as exchange-traded funds ("ETFs"). PDR is the sponsor of each Trust.

2. Applicants request relief to permit certain registered management investment companies and unit investment trusts to acquire shares of the Trusts ("Units") beyond the limitations in section 12(d)(1)(A). To the extent that a Purchasing Fund (as defined below) owns 5% or more of the Units of a Trust, applicants further request relief from sections 17(a)(1) and (2) of the Act to permit the Trust, as an affiliated person of the Purchasing Fund, to sell Units to, and redeem Units from, the Purchasing Fund. Applicants request that the relief apply to (i) the Trusts, and (ii) registered management investment companies ("Purchasing Management Companies") and unit investment trusts ("Purchasing Trusts") that are not sponsored or advised by PDR or an entity controlling, controlled by, or under common control with PDR and that are not part of the same "group of investment companies" as the Trusts within the meaning of section 12(d)(1)(G)(ii) of the Act. Purchasing Management Companies and Purchasing Trusts are collectively referred to as "Purchasing Funds."¹ Purchasing Trusts do not include the Trusts. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Advisor") and may be advised by investment adviser(s) within the meaning of section 2(a)(20)(B) of the Act (each, a "Subadvisor"). Any investment adviser to a Purchasing Management Company will be registered under the Investment Advisers Act of 1940 or exempt from registration.

3. Applicants state that the Trusts will offer the Purchasing Funds simple and efficient vehicles to achieve asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the Trusts provide instant and highly liquid exposure to the markets represented by each Underlying Index

¹ All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Purchasing Fund may rely on the requested order only to invest in the Trusts and not in any other registered investment company.

and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company.

2. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(f) to permit the Purchasing Funds to acquire Units beyond the limits set forth in section 12(d)(1)(A).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying section 12(d)(1)(A), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Purchasing Fund or its affiliates over the Trusts. To limit the influence that a Purchasing Fund may have over a Trust, applicants propose a condition that prohibits the Advisor or a sponsor to a Purchasing Trust ("Sponsor") and certain affiliates from controlling (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. The condition also prohibits any Subadvisor and certain affiliates from controlling (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence by the Purchasing Funds over the Trusts, applicants propose conditions 2, 3 and 4, stated below, to preclude a Purchasing Fund and its affiliated entities from taking advantage of a Trust with respect to transactions between the entities and to

ensure the transactions will be on an arm's length basis.

5. As an additional assurance that a Purchasing Fund understands the implications of an investment by it in a Trust under the requested order, each Purchasing Fund and Trust will execute an agreement ("Purchasing Fund Agreement") stating that the board of directors or trustees ("Board") of, and the Advisor and any Subadvisor to, a Purchasing Management Company, and the Sponsor and trustee of a Purchasing Trust ("Trustee"), as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that because each Trust is a unit investment trust that does not charge any advisory fee, there will be no layered or duplicative advisory fees. Further, applicants note that Units are sold without sales charges, and applicants propose a condition that precludes any sales charges and/or service fees charged with respect to shares of a Purchasing Fund from exceeding the limits applicable to a fund of funds under Conduct Rule 2830 of the National Association of Securities Dealers, Inc. ("Rule 2830"). The Advisor, or Trustee or Sponsor, as applicable, of a Purchasing Fund also will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from a Trust in connection with the investment by the Purchasing Fund in the Trust. Any Subadvisor will waive fees otherwise payable to it by a Purchasing Management Company in an amount at least equal to any compensation received by the Subadvisor, or its affiliate, in connection with any investment by the Purchasing Management Company in the Trust that is made at the direction of the Subadvisor.

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that the Trusts will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that the Purchasing Fund Agreement will require a Purchasing Fund that exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) or (iii), respectively, to disclose in its prospectus that it may invest in ETFs

and to disclose, in "plain English," in its prospectus the unique characteristics of doing so, including but not limited to the expense structure and any additional expenses of investing in ETFs.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3)(B) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that a Trust could become an affiliated person of a Purchasing Fund if the Purchasing Fund acquires 5% or more of the Trust's securities. Although applicants believe that most Purchasing Funds will purchase Units in the secondary market and not directly from a Trust, a Purchasing Fund might seek to transact directly with a Trust.² Section 17(a) could prevent a Trust from selling Units to, and redeeming Units from, a Purchasing Fund that owns 5% or more of the Trust.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such 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 submit that the proposed arrangement satisfies the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration for the purchase or redemption of Units directly from a Trust will be based on the net asset

² Units are only purchased and redeemed directly from a Trust in large blocks (e.g., 50,000 Units) called "creation units."

value ("NAV") of the Trust in accordance with the policies and procedures set forth in the Trust's registration statement. Applicants state that the proposed arrangement will be consistent with the policies of each Purchasing Fund and Trust, and with the general purposes of the Act. Applicants also believe that the requested exemption is 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.

C. Prior Orders

1. Applicants seek to amend certain prior exemptive orders ("Prior Orders").³ Specifically, applicants seek to amend condition 3 to the Prior Order for the SPDR Trust and condition 2 to the Prior Orders for the DIAMONDS Trust and the MidCap SPDR Trust so that it is consistent with the relief being requested from section 12(d)(1). The condition currently provides that the prospectus and Product Description⁴ of the relevant Trust will clearly disclose that, for purposes of the Act, Units are issued by the Trust and that the acquisition of Units by investment companies is subject to the restrictions of section 12(d)(1). Under the new condition, Purchasing Funds will instead be alerted that they may invest in the Trusts in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into a Purchasing Fund Agreement with the relevant Trust regarding the terms of the investment. Applicants will replace the relevant condition in each of the Prior Orders with condition 9, as stated below. In addition, applicants will add conditions 10 and 11, as stated below, to each of the Prior Orders.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisor or Sponsor, (b) any person controlling, controlled by, or under common control with an Advisor

or Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (together, the "Purchasing Fund's Advisory Group") will not control (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. (a) Any Subadvisor, (b) any person controlling, controlled by, or under common control with the Subadvisor, and (c) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) that is advised by the Subadvisor or any person controlling, controlled by, or under common control with the Subadvisor (together, the "Purchasing Fund's Subadvisory Group") will not control (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Units of a Trust, a Purchasing Fund's Advisory Group or a Purchasing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding Units of a Trust, it will vote its Units in the same proportion as the vote of all other Unitholders.

2. A Purchasing Fund and its Advisor and any Subadvisor, Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, a "Purchasing Fund Affiliate") will not cause any existing or potential investment by the Purchasing Fund in a Trust to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Trust or the promoter, sponsor or principal underwriter of a Trust, and any person controlling, controlled by, or under common control with any of those entities (each, a "Trust Affiliate").

3. The Board, including a majority of the disinterested directors or trustees, of a Purchasing Management Company, will adopt procedures reasonably designed to assure that the Advisor and any Subadvisor are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a Purchasing Fund Affiliate from a Trust or a Trust Affiliate in connection with any services or transactions.

4. No Purchasing Fund or Purchasing Fund Affiliate will cause a Trust to

purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, Advisor, Subadvisor, employee or Sponsor of the Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Advisor, Subadvisor, employee or Sponsor is an affiliated person.

5. Before investing in a Trust in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and Trust will execute a Purchasing Fund Agreement stating, without limitation, that the Board of, and the Advisor and any Subadvisor to, a Purchasing Management Company, or the Trustee and Sponsor of a Purchasing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. The relevant Trust and the Purchasing Fund will maintain and preserve a copy of the order and the agreement for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

6. An Advisor, or a Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by a Purchasing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from a Trust in connection with the investment by the Purchasing Fund in the Trust. Any Subadvisor will waive fees otherwise payable to the Subadvisor, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received by the Subadvisor, or an affiliated person of the Subadvisor, in connection with any investment by the Purchasing Management Company in the Trust made at the direction of the Subadvisor. In the event that the Subadvisor waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

7. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

8. No Trust will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

Amendments to the Prior Orders

Applicants agree to replace condition 3 of the SPDR Order, condition 2 of the DIAMONDS Order and condition 2 of

³ The Prior Orders are SPDR Trust, Series 1, *et al.*, Investment Company Act Release Nos. 18959 (Sept. 23, 1992) (notice) and 19055 (Oct. 26, 1992) (order) ("SPDR Order"), DIAMONDS Trust, Series 1, *et al.*, Investment Company Act Release Nos. 22927 (Dec. 5, 1997) (notice) and 22979 (Dec. 30, 1997) (order) ("DIAMONDS Order"), and MidCap SPDR Trust, Series 1, *et al.*, Investment Company Act Release Nos. 20797 (Jan. 3, 1995) (notice) and 20844 (Jan. 18, 1995) (order) ("MidCap SPDR Order").

⁴ A "Product Description" is a document that accompanies secondary market trades of Units and provides a plain English overview of a Trust.

the MidCap SPDR Order with the following condition:

9. The Trust's prospectus and Product Description will clearly disclose that, for purposes of the Act, the Units are issued by the Trust, which is a registered investment company, and the acquisition of Units by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Trust beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Trust regarding the terms of the investment.

Applicants agree to add the following condition to each of the Prior Orders:

10. The website of the American Stock Exchange ("Amex"), which is and will be publicly accessible at no charge, will contain the following information, on a per Unit basis, for the Trust: (a) The prior business day's NAV and the midpoint of the bid/ask price on the Amex at the time NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in tabular, chart or graphical format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for the Trust will state that the Amex Web site has information about the premiums and discounts at which the Units have traded.

Applicants agree to add the following condition to each of the Prior Orders:⁵

11. The prospectus and annual report for the Trust will also include: (a) Data in tabular, chart or graphical form displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges (i) in the case of the prospectus, for the most recently completed calendar year (and the most recently completed calendar quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data in tabular, chart or graphical form, calculated on a per Unit basis for one, five and ten year periods (or life of the Trust, if shorter), (i) the cumulative total

return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the Underlying Index.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-6918 Filed 3-26-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27819]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 23, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provision of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 19, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 19, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et. al. (70-10184)

Northeast utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090, a registered holding company under the Act; and its subsidiaries; The Connecticut Light and Power Company, a wholly-owned public utility subsidiary of NU, CL&P Receivables Corporation, NU Enterprises, Inc., Northeast Generation

Services Company, Woods Network Services, Inc., NGS Mechanical, Inc., E.S. Boulous Company, Woods Electrical Co., Inc., Northeast Generation Company, Select Energy Inc., Select Energy New York, Inc., The Rocky River Realty Company, The Quinnehtuk Company, Charter Oak Energy, Inc., Mode 1 Communications, Inc., Northeast Utilities Service Company, Yankee Energy System, Inc., a wholly-owned public utility holding company subsidiary exempt under section 3(a)(1) of the Act, Yankee Gas Services Company, a gas public utility, Yankee Energy Financial Services Company, Northeast Nuclear Energy Company, a wholly-owned public utility subsidiary of NU, NorConn Properties, Inc., and Yankee Energy Services Company, each located at 107 Selden Street, Berlin, Connecticut, 06037; Public Service Company of New Hampshire, a wholly-owned public utility subsidiary of NU, Properties, Inc., North Atlantic Energy Corporation, a wholly-owned public utility subsidiary of NU, and North Atlantic Energy Services Corp., each located at Energy Park, 780 North Commercial Street, Manchester, New Hampshire, 03101; Select Energy Services, Inc., Reeds Ferry Supply Co., Inc., Select Energy Contracting, Inc., and HEC/Tobyhanna Energy Project, Inc., each located at 24 Prime Parkway, Natick, Massachusetts, 01760; Western Massachusetts Electric Company, a wholly-owned public utility subsidiary of NU, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01090; and Holyoke Water Power Company, a wholly-owned public utility subsidiary of NU, and Holyoke Power and Electric Company, each located at One Canal Street, Holyoke, Maine, 01040 (together, "Applicants") have filed a declaration under section 12(b) and rules 45 and 54 under the Act.

The Applicants are seeking Commission approval to amend their tax allocation agreement so that NU will retain the benefit (in the form of the reduction in consolidated tax) that is attributable to tax losses incurred by NU in connection with the debt incurred to acquire Yankee Energy System, Inc. on March 1, 2000. In connection with the acquisition, NU borrowed \$263 million under a bank term loan facility. That borrowing has been refinanced several times, and currently NU has outstanding \$263 million of ten-year senior unsecured notes carrying a coupon rate of 7.25%, which mature on April 1, 2002 (as may be refinanced, "Acquisition Debt"). The annual interest payment on this debt is approximately \$19.1 million. At an

⁵ For purposes of this condition, for all dates prior to April 3, 2001, the term "Bid/Ask Price" shall mean the midpoint of the best bid and offer prices on the Amex at the closing time of the regular trading session for the Units, ordinarily 4:15 p.m., rather than at the time NAV was calculated.