

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.*

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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]

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## **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