

will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment, and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD.

10. No Fund 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.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-18531 Filed 8-12-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26529; 812-13108]

Fixed Income Securities, L.P., et al.; Notice of Application

August 9, 2004.

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

ACTION: Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b-1 and rule 22c-1 thereunder; and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

APPLICANTS: Fixed Income Securities, L.P. ("FIS") and any entity controlling, controlled by or under common control with FIS (each, a "Depositor"); Advisor's Disciplined Trust ("ADT"); any future registered unit investment trusts sponsored by the Depositor (together with ADT, the "Trusts") and the future and existing series of each Trust (each a "Series").¹

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts ("UITs") to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account or place with others \$100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FLING DATES: The application was filed on July 15, 2004, and amended on August 5, 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 September 2, 2004, and should be accompanied by proof of service on the 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, 18925 Base Camp Road, Monument, CO 80132.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942-0634 or Annette Capretta, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. ADT is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act.² FIS, a Texas limited partnership, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the depositor of each Series. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee ("Trustee").

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio ("Units"). The Units are offered to the public by the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Depositor may reduce the sales charge in compliance with rule 22d-1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Depositor will maintain a secondary market for Units and

¹ Any future Series that relies on the requested order will comply with the terms and conditions of the application.

² All presently existing Trusts that currently intend to rely on the requested order have been named as applicants.

continually offer to purchase these Units at prices based upon the market value of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Depositor discontinues maintaining such a market at any time for any Series, holders of the Units ("Unitholders") of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis ("deferred sales charge" or "DSC"). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected "up front" (*i.e.*, at the time an investor purchases the Units). The DSC would be collected subsequently in installments ("Installment Payments") as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d-1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N-1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay an Installment

Payment if distribution income is insufficient, and that securities will be sold pro rata or a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series ("Exchange Option") and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type ("Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge ("Five Months Adjustment"). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units ("DSC Front-End Exchange Adjustment"). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Depositor may waive such payment. Further, the Depositor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Option as set forth in the conditions to the application.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c-1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value ("NAV"). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c-1.

2. Section 22(d) of the Act and rule 22d-1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that 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. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of

each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d-1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Section 11(a) and (c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate to maintain the equitable treatment of various investors in each Series.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have \$100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit substantially more than \$100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants state that they may not rely on rule 14a-3 because certain future Series (collectively, "Equity Series")

will invest all or a portion of their assets in equity securities or registered investment company securities pursuant to an exemptive order, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a-3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b-1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b-1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

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

A. DSC and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c-10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N-1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

1. Applicants will comply in all respects with the requirements of rule 14a-3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities."

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-18532 Filed 8-12-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27883]

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

August 9, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions 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 September 3, 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 September 3, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70-10232)

Allegheny Energy, Inc. ("Allegheny"), 800 Cabin Hill Drive, Greensburg, PA 15601, a registered holding company under the Act has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

Allegheny is a diversified energy company, headquartered in Greensburg, Pennsylvania. Allegheny delivers electric energy to approximately 1.6 million customers in parts of Maryland, Ohio, Pennsylvania, Virginia, and West Virginia, and natural gas to

approximately 230,000 customers in West Virginia through the following wholly-owned regulated public utility companies: West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Mountaineer Gas Company.

Allegheny requests authority from the Commission to issue shares of common stock, \$1.25 par value (the "Common Stock") in accordance with the terms of a Non-Employee Director Stock Plan (the "Plan"). Under the Plan, Allegheny proposes to issue up to 300,000 shares of Common Stock to its non-employee directors.¹ The Plan provides that, on March 31, 2004 and each March 31, June 30, September 30, and December 31 thereafter, Allegheny will issue a number of shares as determined by the Board, up to a maximum of 1,000 shares of Common Stock (the "Share Payment") to each person then serving as a non-employee director for services rendered during the quarter.² In addition, any director whose service terminates during the quarter due to death or disability will be issued the same Share Payment. For 2004, the Board has set the quarterly Share Payment to each non-employee director at 800 shares of Common Stock. The Share Payments are in addition to cash compensation that each non-employee director receives for Board service, but the Plan will supersede and replace Allegheny's prior policy of granting \$12,000 worth of Common Stock annually to non-employee directors as part of his or her director compensation. The Plan has been approved by Allegheny's Board of Directors (the "Board") and by Allegheny's stockholders at the company's 2004 annual meeting of stockholders. No Share Payments will be made under the Plan, until Allegheny receives the Commission's authorization under the Act, which is the only regulatory approval required prior to making the Share Payment. Upon receipt of the Commission's authorization to issue the Common Stock under the Plan, Share Payments that were due under the Plan since March 31, 2004 will be made within 10 business days thereafter.

The Plan is intended to aid Allegheny in attracting and retaining non-employee directors by encouraging and

¹ The number of shares of Common Stock authorized under the Plan may be adjusted to reflect a stock split, combination of shares, recapitalization, stock dividend, or other similar changes in Allegheny's capital stock after the adoption of the Plan.

² Each non-employee director will have the right to defer Share Payments due under the Plan in accordance with the Allegheny Energy, Inc. Revised Plan for Deferral of Compensation of Directors or any successor plan.

enabling them to acquire a financial interest in Allegheny, and to align the economic interest of the participants with those of Allegheny's stockholders. The Board has determined that the compensation to be made to non-employee directors under the Plan is appropriate in type and amount and competitive with compensation paid to directors by other companies of similar size and in similar businesses.

The Plan will be administered by the Board, which will have authority to interpret the Plan's provisions, and adopt, amend, and rescind rules and regulations for the Plan. The Board, without further stockholder approval, may amend the Plan to conform the Plan to securities or other laws, rules, regulations, or requirements applicable to the Plan, and may generally amend the Plan. The Board, however, cannot, without prior stockholder approval, amend the Plan to: (1) Change the number of shares of Common Stock available for issuance under the Plan; or (2) Increase from 1,000 the maximum number of shares that can be issued each quarter to each non-employee director. The Board may also suspend or discontinue the Plan, in whole or in part, but any suspension or discontinuance will not affect any shares of Common Stock issued under the Plan prior to that action. Under the Plan, 300,000 shares of Common Stock will be available for payment to the participants.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-18496 Filed 8-12-04; 8:45 am]

BILLING CODE 8010-01-P]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50163; File No. SR-BSE-2004-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Boston Options Exchange Trading Rules Regarding Market Opening Procedures

August 6, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 26, 2004, the Boston Stock Exchange, Inc.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.