

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 03-1605 Filed 1-23-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Cornerstone Total Return Fund, Inc., Common Stock, \$.01 Par Value) File No. 1-31582

January 17, 2003.

Cornerstone Total Return Fund, Inc., a New York corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock \$.01 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on December 2, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the Issuer's best interest to delist from the NYSE and list on the American Stock Exchange LLC due to the continued decline in the level of net assets which would affect the Issuer's ability to remain listed on the NYSE. The Company anticipates that it will begin trading on the Amex once the Issuer is delisted from the NYSE.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before February 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-

0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the New York Stock Exchange, Inc. (Progressive Return Fund, Inc., Common Stock, \$.001 Par Value) File No. 1-10341

January 17, 2003.

Progressive Return Fund, Inc., a Maryland corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on December 2, 2002 to withdraw the Issuer's Security from listing on the NYSE. In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the Issuer's best interest to delist from the NYSE and list on the American Stock Exchange LLC ("Amex") due to the continued decline in the level of net assets which would affect the Issuer's ability to remain listed on the NYSE. The Issuer anticipates that it will begin trading on the Amex once the Issuer is delisted from the NYSE.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's

application relates solely to the Security's withdrawal from listing on the NYSE and from registration under Section 12(b) of the Act³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before February 10, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47202; File No. SR-MSRB-2002-14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Market Emergencies

January 16, 2003.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Exchange Act") and Rule 19b-4 thereunder,¹ notice is hereby given that on December 11, 2002, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (File No. SR-MSRB-2002-14) (the "proposed rule change") described in Items I, II, and III below, which Items have been prepared by the MSRB. The SEC is publishing this notice to solicit comments on the proposed rule change from interested persons.

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-(d).

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

⁵ 15 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-2(d).

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

The MSRB is filing a proposed rule change concerning market emergencies consisting of an Interpretation of its Rule G-17, on conduct of municipal securities activities and an amendment to its Rule A-4, on meetings of the Board.

The text of the proposed rule change follows. Italics indicate proposed additions.

Rule G-17. Conduct of Municipal Securities Activities

Interpretation of Rule G-17—Effecting Transactions During Market Emergency

It is inconsistent with the principles of fair dealing embodied in Rule G-17 for a broker, dealer or municipal securities dealer to effect transactions in municipal securities during a market emergency. For purposes of this interpretation, a market emergency is any situation causing a substantial failure in any of the systems necessary for clearance, settlement, confirmation, payment, or delivery of transactions in municipal securities or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities. In determining whether such a market emergency exists, a broker, dealer or municipal securities dealer shall rely upon the issuance of official announcements by the MSRB concerning market emergencies, which shall be issued after consultation with the Securities and Exchange Commission. Official announcements by the MSRB on market emergencies will be communicated to brokers, dealers and municipal securities dealers through news outlets commonly used in the municipal securities industry, by posting on the MSRB's World Wide Web site at www.msrb.org, and by transmittal of the announcement to the electronic mail addresses provided to the MSRB by brokers, dealers and municipal securities dealers under Rule G-40. Such official announcements will include information on the nature of the market emergency and affected systems, the nature and scope of transactions affected, and the status of the market emergency and its expected duration, if that is known.

Rule A-4. Meetings of the Board

(a) through (d) No Change.
(e) *Special Meetings on Market Emergencies. Notwithstanding anything in these rules to the contrary, the following procedures govern special*

meetings to act on market emergencies: (i) notice of special telephone conference call meeting on a market emergency shall be sent to all Board members by the Executive Director, or in the absence of the Executive Director, by his or her designee: (A) as soon as possible after credible information is received suggesting the existence of a market emergency, and (B) during the existence of a declared market emergency, within 24 hours of a request by any Board member; (ii) notice of a special meeting on a market emergency, including a description of the proposed Board action and instructions for joining the conference call, shall be given by telephone and by e-mail to all Board members; (iii) the Executive Director, or his or her designee, shall consult with the Commission on the emergency situation prior to a special meeting on a market emergency, if possible; (iv) the quorum requirement for a special meeting on a market emergency shall be five members and there shall be no requirement that at least one public representative, one broker-dealer representative and one bank representative be present; and (v) any action taken at such a meeting shall be by a majority vote of Board members attending the meeting and shall be limited to declaring a market emergency or ending a declared market emergency. For purposes of this paragraph (e), the meaning of the term "market emergency" shall be as defined in "Notice of Interpretation of Rule G-17—Effecting Transactions During Market Emergency," dated _____.

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

In its filing with the SEC, the MSRB 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 IV below. The MSRB has prepared summaries, set forth in Section 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

After the events of September 11, 2001, staff of the Commission and the MSRB met to discuss how the municipal securities market functioned in the aftermath of the attacks on the

World Trade Center. On September 11, and in the days following, MSRB monitored the municipal securities market through its contacts with dealers, clearing corporations and information providers.

Although the effect on lower Manhattan was severe, because the municipal securities market is decentralized, the municipal securities market as a whole was not affected to the same degree as securities exchanges physically located near the disaster. On September 11, some trading in municipal securities occurred, albeit a very limited amount. Based on transactions reported to the MSRB's Transaction Reporting System, trade volume reached 8,244 trades by September 13 and 17,941 trades by September 17. On September 19 and 20 transaction volume reached 23,996 and 26,155 trades respectively. Prior to September 11, in a typical day, 27,000 transactions were processed.

Aside from dealer operations in Manhattan, in general, the infrastructure and systems necessary for processing transactions in the municipal securities market functioned in the days after September 11. Clearance and settlement systems for municipal securities transactions provided by Depository Trust and Clearing Corporation (DTCC) remained operational, although telecommunications problems in Manhattan did affect the ability of dealers in that area to exchange data with DTCC. The problems with clearing bank functions that disrupted the government securities market did not substantially affect the municipal securities market.

Despite the resilience of municipal securities market systems and infrastructure on September 11, there remains a concern about what might have happened if the situation had been different. Had systems or infrastructure critical to the municipal securities market been disabled by the disaster, no legal or regulatory mechanism existed to temporarily halt trading. For example, any problems with central clearance and settlement systems are of an immediate concern, since the accumulation of unsettled trades, particularly in a volatile or chaotic market, presents risks to all segments of the market. Commission staff accordingly have asked MSRB to consider rulemaking to provide a procedure for a trading halt should a market emergency disable critical market systems or infrastructure in the future.

The proposed rule change would provide such a procedure. Should a similar situation occur in the future, MSRB would review conditions in the

market through its contacts with dealers, clearing agencies and vendors of critical services to the market just as it did after September 11. The proposed rule change, however, includes changes to MSRB's administrative procedures in Rule A-4 allowing special MSRB telephone conference call Board meetings on market emergencies to occur without the normal notice requirement of seven days or the normal quorum requirement of two-thirds of the Board's members. The proposed rule change also includes a format interpretation of Rule G-17, on fair practice, that would prohibit dealers from trading for the duration of a market emergency declared by the MSRB. These proposed rule changes thus provide a procedure for instituting a trading halt should a market emergency necessitate one in the future.

The proposed rule change specifically identifies the channels by which MSRB would make information known to municipal securities dealers in the event of a market emergency. It notes that this will be done through new outlets commonly used in the municipal securities industry, postings on the MSRB's Web site and by transmitting announcements to the electronic mail addresses provided to the MSRB by dealers under Rule G-40, on electronic mail contacts. Having an announced, written procedure for dealer notification would add a level of preparedness if a market emergency actually occurs. Just as important, it provides dealers with clear direction on where to look if the situation is uncertain and questions exist about whether an emergency has been declared. This also will help dealers determine if any other emergency rulemaking is in effect. After September 11 there was some confusion among municipal securities dealers about whether the regular-way settlement cycle for municipal securities had been changed to T+5 from the T+3 cycle mandated under MSRB Rules G-12(b)(ii) and G-15(b)(ii). This apparently was the result of announcements made concerning transactions in government bonds. In monitoring clearance and settlement data after September 11, the MSRB observed that some dealers were, as a practice, submitting all of their regular-way trades with a T+5 settlement date. Among other problems, this caused trade-matching failures in the central comparison system for inter-dealer transactions. The notification procedure for market emergency declaration will help direct the attention of dealers in municipal securities to the MSRB for announcements on possible rule

changes in the wake of an emergency and thus should help to avoid similar confusion in the future.²

The proposed rule change's interpretation of Rule G-17 follows a principle of securities law that a dealer must not "accept or execute any order for the purchase or sale of securities or induce or attempt to induce such purchase or sale if the dealer does not have the personnel and facilities to enable prompt execution and consummation of the transactions."³ The MSRB believes that, where a substantial failure has occurred in the systems necessary for clearance, settlement, confirmation, payment or delivery of transactions in municipal securities, or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities, it may become necessary, for the overall protection of market participants, to halt trading by all dealers.⁴ Clearance and settlement systems are a particular concern because of counter-party risk that escalates when unsettled transactions grow during volatile or chaotic markets. Other situations possibly warranting a temporary halt in trading might include a massive failure of telecommunication systems, or the corruption of essential data used by the municipal securities industry (for example, through a computer virus).

Interpretation of Rule G-17

The proposed Interpretation of Rule G-17 has the following elements:

- It is a violation of Rule G-17 for a dealer to continue to effect transactions in municipal securities during an MSRB-declared "market emergency."
- A "market emergency" for this purpose is defined as "a situation causing substantial failure in any of the systems necessary for clearance,

² The proposed rule change addresses only the procedure for announcing trading halts. Should changes in existing MSRB rules be necessary during an emergency, these could be adopted by the MSRB and approved summarily by the SEC. Section 19(b)(3)(B) of the Exchange Act grants the SEC authority to approve proposed rule changes summarily when "it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds."

³ See, e.g., Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

⁴ The scope of the proposed rule change does not include the issuance of "regulatory halts" similar to those issued by exchanges and other SROs to stop trading in a specific security pending the announcement of news, or to allow news to be absorbed by the market before trading continues. Since this situation would not constitute an emergency effecting essential systems and market infrastructure, it is not included within the definition of a market emergency.

settlement, confirmation, payment or delivery of transactions in municipal securities, or in other systems necessary for the prompt execution and consummation of municipal securities transactions or the fair and accurate pricing of municipal securities."

- Prior to acting on a market emergency, MSRB will consult with the SEC.
- Official announcements by the MSRB on market emergencies will be communicated to dealers through news outlets commonly used in the municipal securities industry, by posting on the MSRB's World Wide Web site at <http://www.msrb.org>, and by transmittal of the announcement to the electronic mail addresses provided to the MSRB by dealers under Rule G-40.

Amendment to Rule A-4

Prior to making any decision on a specific market emergency, the MSRB will hold a special Board meeting to share information and discuss the situation. The MSRB's current procedure for holding special Board meetings is contained in Rule A-4. Among other provisions, the rule states that the Secretary of the Board will call special meetings at the request of the Chairman or at the written request of three or more members. Seven days written notice, signed by the Secretary of the Board (or three days notice if given or sent by telephone, e-mail or personal delivery), is required for special meetings. The quorum for any Board meeting is two-thirds of the Board (normally ten members), with at least one securities firm representative, one bank dealer representative and one public member. Formal action requires an affirmative vote of the majority of the Board (normally eight members).

During a time of crisis, market participants would want to know fairly quickly whether trading is to be halted. The existing seven-day and three-day notice requirements for special Board meetings thus seem impractical. Moreover, establishing communication with at least ten Board members and securing eight affirmative votes also might present a problem, particularly if the emergency in question affects the infrastructure of one or more major financial centers and members cannot be reached. The proposed rule change would streamline the process specifically for market emergency meetings. The proposed amendments to Rule A-4 provides the following procedure:

- The Executive Director, or his or her designee, will schedule a special telephone conference call meeting on the possible declaration of a market

emergency as quickly as possible after receipt of credible evidence that a market emergency exists.

- At least one hour's advance notice of a special meeting on a market emergency will be sent to each Board member by telephone and e-mail.

- The Executive Director, or his or her designee, will consult with the SEC prior to each special meeting if this is possible. (Note that consultation with SEC would be required by the interpretation of Rule G-17 governing trading halts. Thus, consultation with the SEC would have to occur prior to any formal declaration of market emergency even if it does not occur prior to the meeting.)

- The quorum of ten members generally necessary for a Board meeting is replaced for special meetings on market emergencies with a quorum of five members. The general requirement that a member be present from each of the three statutory categories (securities firm, bank dealer, public member) does not apply.

- The requirement in the proposed rule change that all Board members be sent a notice of the special meeting by both telephone and e-mail is to ensure that as many Board members as possible, including those from all three statutory categories, can be included in the meeting. While the five-person quorum requirement does not contain any distributional requirements, Board staff shall endeavor, to the extent circumstances permit, to have at least one broker-dealer, one bank, and one issuer representative at the special meetings. To that end, Board staff shall obtain from each Board member contract information that will help ensure the ability of the staff to get notice of a special meeting to such persons in market emergency situations.

- Board action at a meeting on a market emergency is limited to declaring a market emergency or ending a declared market emergency.

- A majority vote of members attending the meeting (not necessarily a majority of the Board) is required to take action.

- Once a market emergency has been declared, the Executive Director, or his or her designee, will schedule additional special conference call meetings on the market emergency within 24 hours after any request to do so by a Board member.

(2) Basis

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules:

* * * be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * and to protect investors and the public interest. * * *

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

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Member, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the SEC 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 SEC will:

- By order approve such proposed rule change, or
- 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 forgoing, including whether the proposed rule is consistent with the Exchange Act. Persons making written submission 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 SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-14 and should be submitted by February 14, 2003.

⁵ 15 U.S.C. 78o-4(b)(2)(c).

For the SEC by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47208; File No. SR-NASD 2002-157]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding ACT Risk Management

January 16, 2003.

I. Introduction

On October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its 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 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service. The proposed rule change was published for public comment in the **Federal Register** on December 16, 2002.³ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposed Rule Change

Nasdaq proposed changes to NASD Rule 6150 regarding the risk management function provided by Nasdaq's Automated Confirmation Transaction Service ("ACT"). Upon approval of the proposed rule change, Nasdaq will permit members to voluntarily utilize the ACT risk management function, provided that they utilize another risk management tool of equal quality and that they and the correspondent firms for whom they clear trades continue to report clearing-eligible trades to ACT in compliance with applicable ACT rules.

III. Discussion

The Commission finds that the proposed rule change is consistent with

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 46948 (December 4, 2002), 67 FR 77117.