

Index which the Adviser believes would help the Equity Fund track the Index. Applicants seek to amend the Prior Order to provide that each Fund generally will invest at least 80% or 90% of its total assets in the securities that comprise the relevant Index, but at times may invest up to 20% of its total assets in certain futures, options, and swap contracts, cash and cash equivalents, including money market funds, as well as securities not included in its Index which the Adviser believes will help the Fund track its Index. At all times, a Fund will hold, in the aggregate, at least 80% of its total assets in component securities and investments that have economic characteristics that are substantially identical to the economic characteristics of the component securities of its Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Index of less than 5 percent.

6. Applicants state that a New Fund will comply with the federal securities laws in accepting a deposit of a portfolio of securities designated by the Adviser to correspond generally to the price and yield of the New Fund's Index ("Deposit Securities")<sup>3</sup> and satisfying redemptions with portfolio securities of the New Fund ("Fund Securities"), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.<sup>4</sup> The specified Deposit Securities and Fund Securities generally will correspond pro rata, to the extent practicable, to the Portfolio Securities of a New Fund.

7. Applicants state that the New Funds will operate in a manner identical to the operation of the existing Equity Funds in the Prior Order, except

<sup>3</sup> Applicants state that a cash-in-lieu amount will replace any "to-be-announced" ("TBA") transaction that is listed as a Deposit Security or Fund Security of any New Fund. A TBA transaction is a method of trading mortgage-backed securities where the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA transactions will be equivalent to the value of the TBA transaction listed as a Deposit Security or Fund Security.

<sup>4</sup> In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the New Fund will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The prospectus for a New Fund will also state that an authorized participant that is not a "Qualified Institutional Buyer," as defined in rule 144A under the Securities Act, will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

as specifically noted by applicants (and summarized in this notice), and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

#### Future Relief

8. Applicants also seek to amend the Prior Order to modify the terms under which the Trusts may offer additional series in the future based on other securities indices ("Future Funds"). The Prior Order is currently subject to a condition that does not permit applicants to register the shares of any Future Fund by means of filing a post-effective amendment to a Trust's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or if the Future Fund could be listed on a national securities exchange ("Exchange") without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

9. The order would amend the Prior Order to delete this condition. Any Future Funds will: (a) Be advised by the Adviser or an entity controlled by or under common control with the Adviser; (b) track Indexes that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trusts or any Sub-Adviser or promoter of a Future Fund; and (c) comply with the respective terms and conditions of the Prior Order, as amended by the present application.

10. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the existing series of the Trusts and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is

not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

#### Applicants' Condition

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 1, 2007:

An Open Meeting will be held on Monday, October 1, 2007 at 10 a.m., in the Auditorium, Room L-002 and a Closed Meeting will be held on Wednesday, October 3, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Open Meeting, scheduled for Monday, October 1, 2007 will be:

The Commission will hear oral argument in an appeal by Stephen J. Horning from the decision of an administrative law judge. Horning was the president, registered financial and operations principal, compliance officer, and a director of Rocky Mountain Securities & Investments, Inc., formerly a registered broker-dealer.

The law judge found that:

Horning failed reasonably to supervise two former Rocky Mountain employees with a

view to preventing their violations of Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5; and

Horning was a cause of Rocky Mountain's inaccurate books and records and its filing of materially false reports in violation of Exchange Act Sections 15(c)(3), 17(a), and 17(e) and Exchange Act Rules 15c3-1, 15c3-3, 17a-3, 17a-5(a), 17a-5(c), 17a-5(d), 17a-11, and 17a-13.

The law judge barred Horning from association with any broker or dealer in a supervisory capacity and suspended him from association with any broker or dealer in any capacity for twelve months.

Among the issues likely to be argued are

1. Whether Horning failed reasonably to supervise; or

2. Whether Horning was the cause of the alleged financial, books, and recordkeeping violations; and

3. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, October 3, 2007 will be:

Formal order of investigation; Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; and Other matters related to enforcement actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: September 26, 2007.

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34-56534; IA-2658; File No. S7-24-07]

### Public Alert: Unregistered Soliciting Entities ("Pause") Program

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice; request for comment.

**SUMMARY:** The Securities and Exchange Commission ("SEC" or "Commission") is announcing a new program that will post on its Web site certain factual

information about unregistered entities that are engaged in the solicitation of securities transactions.

**DATES:** Comments should be submitted on or before November 1, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-07 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-24-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>); Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** John Reed Stark, Chief of the Office of Internet Enforcement and Counselor to the Director, at (202) 551-4540, Jack Hardy, Branch Chief, Office of Investor Education and Advocacy, at (202) 551-6500, Alberto Arevalo, Acting Assistant Director, Office of International Affairs, at (202) 551-6690, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

**SUPPLEMENTARY INFORMATION:** The Commission today is announcing a new program for informing the public about unregistered entities engaged in solicitations of securities transactions. Through this new program, "Public Alert: Unregistered Soliciting Entities" ("PAUSE"), the Commission will publish on its Web site certain factual information about unregistered soliciting entities that have been the subject of complaints forwarded by investors and others, including fellow

securities regulators. By making this information readily available, the Commission expects investors to be better able to evaluate solicitations to buy and sell securities. Before the program and Web site become operational December 3, 2007 the Commission is interested in receiving comments and suggestions on the PAUSE program.

### 1. Background

Generally, entities that solicit purchases or sales of securities for the accounts of other persons in the United States are required to register with the SEC. The Commission regularly receives complaints and inquiries from investors and others, including foreign securities regulators, about solicitations made by entities claiming to be registered, licensed and/or operating in the United States, and in some cases, entities soliciting U.S. investors that are not registered in the United States. When an entity claims to be registered with the SEC, it is in effect claiming that it has made itself available for SEC regulation and oversight. For this reason, it is important for prospective investors to consider whether a soliciting entity is, in fact, registered with the SEC.

The Commission's Office of Investor Education and Advocacy ("OIEA") fields investor complaints and inquiries. The single largest number of investor complaints received by OIEA concern solicitations of investors by unregistered entities that appear to be involved in boiler room and secondary advance fee schemes.<sup>1</sup> In 2005 and 2006, OIEA

<sup>1</sup> Boiler room operations use high-pressure sales tactics generally over the telephone and solicit investors with false and/or misleading information. They frequently purport to be registered broker dealers and/or operating in the United States and offer "opportunities" to invest in securities, often issued by companies organized in the United States. The schemes are disbanded and the wrongdoers disappear after investors wire their money, which is then transferred to offshore accounts. Secondary "advance fee" schemes work very similarly to boiler room operations, the difference being that an advance fee scheme generally targets investors who purchased underperforming securities, perhaps through an affiliated boiler room, offering to arrange a lucrative sale of those securities, but first requiring the payment of an "advance fee" in the form of a commission, regulatory fee or tax, or some other incidental expense. The advance fees are paid, but the promised sale of the securities is never arranged.

For more information about boiler rooms and advance fee schemes, please see the following discussions on our Web site:

- The Fleecing of Foreign Investors: Avoid Getting Burned by "Hot" U.S. Stocks (<http://www.sec.gov/investor/pubs/fleecing.htm>)
- Worthless Stock: How to Avoid Doubling Your Losses (<http://www.sec.gov/investor/pubs/worthless.htm>)
- Protect Your Money: Check Out Brokers and Investment Advisers (<http://www.sec.gov/investor/brokers.htm>)