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.

[FR Doc. 02–1573 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–P

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]

BILLING CODE 8010–01–M

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

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulatiion, Inc. (''NASDR''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDR is proposing to amend Rule 3370(b)(2)(A) and the corresponding recordkeeping requirements under Rule 3370(b)(4)(B) (the ''Affirmative Determination Requirements'') of the NASD to require that, before accepting a short sale order from a broker/dealers that is not an NASD member (''non-member broker/dealer''), a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker/dealer or that the member can borrow the security on behalf of the non-member broker/dealer for delivery by settlement date.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

* * * * *

(b)(2) ''Short Sales''

(A) Customer *non-member broker/dealer short sales*

No member or person associated with a member shall accept a ''short'' sale order for any customer *or non-member broker/dealer* in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or *non-member broker/dealer* or that the member can borrow the security on behalf of the customer or non-member *broker/dealer* for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities, *and proprietary orders of a non-member broker/dealer that meet one of the exceptions in subparagraph (B) below.*

* * * * *

(3) No change

(4) ''Affirmative Determinations''

(A) No change

(B) To satisfy the requirement for an ''affirmative determination'' contained in paragraph (b)(2) above for customer, *non-member broker/dealer,* and proprietary short sales, the member or person associated with a member must keep a written record [which] *that* includes:

(i) if a customer or *non-member broker/dealer* assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's or *non-member broker/dealer's* ability to deliver them to the member within three (3) business days; or

(ii) No change

* * * * *

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

In its filing with the Commission, NASDR 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. NASDR has prepared summaries, set forth in Sections 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

Rule 3370(b)(2)(A) provides that no member or person associated with a member shall accept a short sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. For purposes of Rule 3370(b)(2), the term ''customer'' is defined in NASD Rule 0120(g) and excludes a broker or dealer.[3]

As a result, the requirements of Rule 3370(b)(2)(A) generally would not apply directly to orders received by a member from another broker/dealer (the ''originating broker/dealer''). This does not present regulatory concerns where the originating broker/dealer is also an NASD member, because, as a member, the originating broker/dealer would have an independent obligation to comply with the Affirmative Determination Requirements with respect to the order. Non-member broker/dealers, however, are not subject to NASD rules and, therefore, are not independently required to comply with the NASD's Affirmative Determination Requirements. Thus the Affirmative Determination Requirements generally do not apply to short sale orders that originate with a non-member broker/dealer and are subsequently routed to an NASD member.

NASDR believes that the failure to have uniform application of the Affirmative Determination Requirements affects the integrity of the marketplace by possibly resulting in increased fails to deliver and also creates regulatory disparity by allowing certain firms to effect short sales outside the purview of the NASD's Affirmative Determination Requirements.

To address these concerns, the proposed rule change would amend Rule 3370(b)(2)(A) to require that no member or person associated with a member shall accept a short sale order for any customer, or any non-member broker/dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker/dealer, or that the member can borrow the security on behalf of the customer or non-member broker/dealer for delivery by settlement date. In such instances, members also would be required to comply wit the corresponding recordkeeping requirements under Rule 3370(b)(4)(B).

While NASD members generally are required to make affirmative determinations for both customer and proprietary orders, there are limited exceptions for proprietary orders that are bona fide market making, bona fide fully hedged or bona fide fully arbitraged transactions.[4] Under the proposed rule change, if a member can establish and document that a proprietary order it has received from a non-member broker/dealer meets one of these exceptions, it would be in compliance with the proposed amendments to the Affirmative Determination Requirements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 0120(g) states that the term ''customer'' shall not include a broker or dealer.

[4] Rule 3370(b)(2)(B).

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that applying Affirmative Determination Requirements to short sale orders of non-member brokers/dealers will ensure the integrity of the marketplace by minimizing possible fails to deliver and eliminating regulatory disparities created when short sale orders are not conducted in compliance with the Affirmative Determination Requirements.

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

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

NASDR has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions 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 Commission, and all written communications relating to the proposed rule change between the Commission 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 Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2001–85 and should be submitted by February 13, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1575 Filed 1–22–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45286; File No. SR–NASD–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

January 15, 2002.

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 January 14, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to extend through April 15, 2002, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110—2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on January 14, 2002. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through April 15, 2002. Nasdaq requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections 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

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and Small Cap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).