

For the United States Nuclear Regulatory Commission.

**Nils J. Diaz,**  
Chairman.

For the State of Wisconsin.

**Jim Doyle,**  
Governor.

[FR Doc. 03-10395 Filed 4-28-03; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26026; 812-12915]

### Wells Fargo Funds Trust, *et al.*; Notice of Application

April 23, 2003.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(f)(1)(A) of the Act.

**SUMMARY OF APPLICATION:** The requested order would permit Wells Fargo Funds Trust ("Funds Trust") not to reconstitute its board of trustees to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Wells Fargo Funds Management, LLC ("Funds Management") to rely upon the safe harbor provisions of section 15(f).

**APPLICANTS:** Funds Trust and Funds Management.

**FILING DATES:** The application was filed on December 20, 2002 and amended on April 22, 2003.

**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 May 19, 2003, and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 525 Market Street, 12th Floor, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Attorney-Adviser, at (202) 942-0544, or Mary Kay Frech, 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 (tel. 202-942-8090).

### Applicants' Representations

1. Funds Trust is an open-end management investment company registered under the Act and consists of sixty-seven series. Funds Management, a wholly owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to all of the Funds Trust series, and will serve as investment adviser to certain newly created series of Funds Trust. Funds Management is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Montgomery Funds, which consists of eleven series, and The Montgomery Funds II, which consists of three series, are open-end management investment companies registered under the Act. At the time of the Acquisition (as defined below), Montgomery Asset Management, LLC ("MAM") served as investment adviser to the eleven series of The Montgomery Funds and The Montgomery Funds II involved in the Reorganization (as defined below) (the "MAM Funds"). MAM is registered under the Advisers Act.

2. On November 21, 2002, Wells Fargo, Commerzbank AG, the parent company of MAM, and others entered into an agreement providing for subsidiaries of Wells Fargo to acquire certain advisory business lines of MAM, including the investment advisory relationship with certain mutual funds and managed separate accounts currently advised by MAM. The transaction was consummated on January 17, 2003 (the "Acquisition"), and Wells Capital Management Incorporated ("Wells Capital"), a wholly-owned subsidiary of Wells Fargo that is registered under the Advisers Act, became the investment adviser for the MAM Funds under an interim investment advisory agreement (the "Interim Agreement"). Applicants state that the Interim Agreement satisfies the requirements of rule 15a-4 under the Act and was approved by the boards of trustees of the MAM Funds on December 16, 2002.

3. Following the Acquisition, it is proposed that five existing series and

four new series of Funds Trust (the "Successor Funds") will acquire the assets of the MAM Funds (the "Reorganization"). On December 16, 2002 and December 18, 2002, respectively, the boards of trustees (each a "Board") of the MAM Funds and Funds Trust unanimously approved the Reorganization. The MAM Funds have scheduled a special meeting of the MAM Funds' shareholders for April 25, 2003. Proxy materials for the special meeting were mailed to shareholders of the MAM Funds in February 2003.

4. In connection with the Acquisition and the Reorganization, Funds Management has 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 March 31, 2003, Funds Trust had approximately \$71 billion and the MAM Funds had approximately \$1.4 billion in aggregate net assets, respectively, making the MAM Funds' assets less than 2% of the aggregate net assets of Funds Trust.

5. Applicants state that two of the seven 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 MAM or the MAM Funds.

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 one or more of its experienced trustees to resign or by adding an additional non-interested trustee. Applicants state that either of these solutions would be unfair to Funds Trust shareholders in view of the amount of the assets of the MAM Funds being acquired relative to the amount of assets of Funds Trust. Applicants state that adequate safeguards will be in place to protect the interests of the former shareholders of the MAM Funds following the consummation of the Reorganization. Applicants also assert that adding an additional non-interested trustee to the Board of Funds Trust would require a lengthy process, which could delay and increase the cost of the Reorganization.

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.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 03-10522 Filed 4-28-03; 8:45 am]

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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 April 28, 2003:

Closed Meetings will be held on Tuesday, April 29, 2003 at 10 a.m., April 30, 2003 at 11 a.m., and Thursday, May 1, 2003 at 10 a.m. An Open meeting will be held on Wednesday, April 30, 2003 at 10 a.m., in Room 6600.

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

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

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) (3), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (8) (9)(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, April 29, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; Regulatory matter regarding a financial institution; and Formal orders of investigation.

The subject matter of the open meeting scheduled for Wednesday, April 30, 2003 will be:

The Commission will hear oral argument on appeals by Byron G. Borgardt and Eric M. Banhazl, and the Division of Enforcement, from the decision of an administrative law judge. Borgardt was formerly an officer and director of Target Income Fund, a now-defunct registered investment company. Banhazl was formerly an officer of Target Income Fund.

The law judge found that Borgardt and Banhazl caused, within the meaning of Section 8A of the Securities Act of 1933 and Section 9(f) of the Investment Advisers Act of 1940, Target Income Fund to file registration statements with the Commission between 1992 and 1996 that omitted material information in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 34(b) of the Advisers Act. The law judge also found that some of the omissions charged were not material.

The law judge ordered Borgardt and Banhazl to cease and desist from causing any violations or future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and from committing any violations or future violations of Section 34(b) of the Investment Company Act.

Among the issues likely to be argued are:

1. Whether respondents committed the alleged violations;

2. Whether the omissions charged were material as a matter of law; and,

3. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the closed meeting scheduled for April 30, 2003 will be: Post-argument Discussion.

The subject matter of the closed meeting scheduled for Thursday, May 1, 2003 will be: Institution and settlement of injunctive actions; Opinion; Formal order of investigation; and Institution and settlement of administrative proceedings of an enforcement nature.

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) 942-7070.

Dated: April 24, 2003.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-10628 Filed 4-25-03; 12:02 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47719; File No. SR-ISE-2003-11]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees

April 23, 2003.

On March 6, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot.

The Commission published the proposal rule change for comment in the **Federal Register** on March 19, 2003.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal rule change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 47484 (March 11, 2003), 68 FR 13354.