

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26063; 812-12972]

Société Générale, et al.; Notice of Application

May 29, 2003.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(F)(ii) of the Act, under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act and section 14(a) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would (a) permit certain existing and future registered closed-end investment companies (each, an "SG Trust," and collectively "SG Trusts") that are sponsored by SG Cowen Securities Corporation ("SG Cowen"), or any entity controlling, controlled by or under common control with SG Cowen, to offer and sell shares to the public with a sales load that exceeds the limit in section 12(d)(1)(F); (b) permit the SG Trusts to purchase certain securities from Société Générale ("SG Paris") or other issuers that are involved in securities-related activities; (c) exempt the SG Trusts from the initial net worth requirements of section 14(a); (d) permit SG Cowen to deposit with each SG Trust the components of that SG Trust's portfolio; and (e) permit SG Paris to write certain put or index options deposited with an SG Trust and to make payments pursuant to the terms of such options to the SG Trust, and to purchase and exercise certain call options from the SG Trust.

APPLICANTS: SG Paris, SG Cowen, and SG Cowen Principal Protection Trust I ("SG Trust I").

FILING DATES: The application was filed on May 9, 2003, and amended on May 22, 2003.

HEARING OF 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 June 23, 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 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: SG Cowen and SG Trust I, 1221 Avenue of the Americas, New York, New York 10020; SG Paris, 29, Boulevard Haussmann, 75009 Paris, France.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Michael W. Mundt, Senior Special Counsel, 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. Each SG Trust will be organized as a limited life grantor trust under Delaware law and registered under the Act as a closed-end management investment company. SG Cowen, or an entity controlling, controlled by or under common control with SG Cowen, will serve as sponsor to SG Trust I and all future SG Trusts.¹ No SG Trust will have a separate investment adviser, but each will be managed by a board of trustees ("Board") consisting of three or more trustees, a majority of whom are not interested persons, as defined in section 2(a)(19) of the Act, of the SG Trust or SG Cowen ("Independent Trustees"). A Commercial bank or trust company, unaffiliated with SG Cowen and qualified to serve as a trustee under the Trust Indenture Act of 1939, will serve as administrator to each SG Trust to carry out the day-to-day administration of that SG Trust. SG Cowen will serve as principal underwriter, as defined in section 2(a)(29) of the Act, of the shares issued by SG Trust I. Future SG Trusts may employ different principal underwriters. The investment objectives of each SG Trust will be to preserve the initial capital of investors at maturity of the SG Trust, while also giving investors the opportunity to participate in a possible increase in the value of a securities

¹ SG Trust I is currently the only existing SG Trust intending to rely on the requested order. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

market index during the term of the investment.

2. SG Cowen is a broker-dealer registered with the Commission under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). SG Paris is a French limited liability company, registered in France and having the status of a bank. SG Cowen and SG Paris are part of the Société Générale Group (the "Group"), an international banking and financial services group based in France that includes approximately 300 French and foreign banking and non-banking companies.

3. Before an SG Trust begins operations, SG Cowen will purchase units of the Nasdaq-100 Trust ("QQQ"),² securities issued by another ETF, or securities issued by one or more other issuers not registered or required to be registered as an investment company,³ such as an operating company³ (these securities are collectively referred to as "Reference Securities"). SG Cowen will purchase the Reference Securities on the open market at their market price at the time of purchase ("Purchase Price"). In addition, the Board of an SG Trust will employ an unaffiliated agent ("Independent Agent") to solicit competitive offers from at least three unaffiliated third party derivatives dealers and SG Paris to sell to SG Cowen over-the-counter put options on the Reference Securities ("Portfolio Puts").⁴ The strike price of each Portfolio Put will equal the Purchase Price. The Independent Agent will also solicit competitive bids from at least three Unaffiliated Bidders and SG Paris to purchase from SG Cowen over-the-counter call options on the Reference Securities ("Portfolio Calls") at the same

² QQQ are units of an exchange-traded fund ("ETF"). An ETF is an investment company that is registered under the Act as an open-end management investment company or unit investment trust ("UIT") and that has received certain exemptive relief in order that its securities may be traded at "negotiated prices" on a national securities exchange in the same manner as other equity securities.

³ Issuers will not include entities that rely on sections 3(c)(1) or 3(c)(7) of the Act.

⁴ The derivatives dealers will consist of major broker-dealers and/or financial institutions that are in the business of making bids or offers on Derivatives (as defined below) and that are not affiliated persons, promoters or principal underwriters of an SG Trust, or affiliated persons of such persons ("Unaffiliated Bidders"). The Independent Agent will solicit offers only from derivatives dealers with a credit rating of A or better by S&P and A2 or better by Moody's and that are subject to bankruptcy or insolvency laws providing exemptions from any automatic stay imposed under those laws to the extent necessary to permit the liquidation of the Portfolio Puts and Index Options (as defined below).

strike price. Because the sale price of the Portfolio Calls should exceed the purchase price of the Portfolio Puts, an amount of cash will be generated ("Net Premium") which SG Cowen will use to purchase over-the-counter cash-settled options tied to the performance of a securities market index ("Index Options").⁵ The Independent Agent will also solicit competitive offers from at least three Unaffiliated Bidders and SG Paris to sell these Index Options to SG Cowen. The Portfolio Puts, Portfolio Calls and Index Options (collectively, the "Derivatives") will be European-style options, and will all expire on the same day ("Termination Date").

4. The Independent Agent will solicit bids or offers for each Derivative pursuant to procedures adopted by the Board and communicated to the Independent Agent as set forth in condition 1 below. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. SG Cowen may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris on behalf of an SG Trust unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees.

5. SG Cowen will deposit with each relevant SG Trust the Reference Securities, the obligations under the Portfolio Calls, the Portfolio Puts, the Index Options, and an amount of cash for operational expenses (collectively, the "Portfolio"). Except in the event of the bankruptcy or insolvency of the writer of a Portfolio Put or Index Option, the SG Trust will hold each component of the Portfolio until the Termination Date. Certain future SG Trusts may also hold a separate guarantee of principal provided by a bank or insurance company that would provide additional protection in the event that a writer of a Portfolio Put defaulted.⁶

⁵ The Index options may be based on indices that are broad-based, narrow-based, sector specific, customized, or based on the performance of a single security. The value of any index will be publicly disseminated throughout the trading day on each day that the American Stock Exchange ("AMEX") is open for normal trading.

⁶ No guarantee would be purchased from an affiliate of SG Cowen unless applicants first obtained a separate order of exemption permitting such a purchase, the Commission issued one or more exemptive rules that would permit such a purchase, or the guarantee were structured in a manner that complied with, among other things, the then-current interpretations of the Commission and its staff regarding sections 12(d)(3) and 17(a) of the Act.

6. During the initial offering, shares of an SG Trust ("Shares") will be sold to the public at a price equal to the net asset value per share, as determined by or under the direction of the Board, plus a sales load and an amount intended to compensate SG Cowen for the organizational expenses of the relevant SG Trust.⁷ Shares will be listed on the AMEX, and will subsequently trade at market prices. Applicants state that the secondary market value of the Shares is expected to depend primarily on market interest rates, market volatility, and the value of the Index Options. Each SG Trust will calculate the net asset value of its Shares on a weekly basis in accordance with procedures adopted by the Board.

7. Applicants state that an SG Trust will protect principal primarily through the use of the Portfolio Puts. Applicants indicate that the combination of the Portfolio Puts and Portfolio Calls will effectively eliminate any possibility of gain or loss on the Reference Securities. Applicants state that the potential return on the investment in an SG Trust is therefore derived solely from the performance of the Index Options. Applicants believe that structuring the SG Trusts in this manner will offer investors certain advantages over other types of principal protected products, including certain tax and performance benefits.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other required investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that, among other provisions,

⁷ SG Cowen will retain a portion of the Net Premium as compensation for organizing, structuring, and paying the operational expenses of an SG Trust. In addition, the Portfolio will include an amount of cash to be periodically disbursed to SG Cowen to cover structuring, organization and ongoing expenses of the SG Trust. Any expenses in excess of the cash amount will be borne by SG Cowen; any cash in excess of the actual expenses will be retained by SG Cowen. These expenses will be disclosed in advance in the prospectus for each SG Trust.

the acquired company does not impose a sales load of more than 1.5%. Section 12(d)(1)(f) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

2. An SG Trust will invest in shares of QQQs or other ETFs in reliance on section 12(d)(1)(F). Applicants request an exemption under section 12(d)(1)(f) from section 12(d)(1)(F)(ii) so that the SG Trusts may offer shares to the public with a sales load that exceeds 1.5%. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to shares of any SG Trust will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules applicable to a fund or funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the aggregate sales charges would not exceed the limit that otherwise lawfully could be charged at any single level. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

B. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3-1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3-1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or an affiliated person of those entities. In addition, rule 12d3-1(b)(3) does not permit a registered investment company to invest more than five percent of the value of its total assets in securities of an issuer that derived more than 15% of its gross revenues from securities related activities. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act 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 policies and provisions of the Act.

2. Applicants state that because SG Pairs is an affiliated person of SG Cowen, a promoter of the SG Trust, the exemption afforded by rule 12d3-1 would not be available to an SG Trust with respect to the purchase of Portfolio Puts and/or Index Options from SG Paris at the time SG Cowen deposits the Portfolio into an SG Trust. Applicants also state that it is possible that the Index Options or the Portfolio Puts may represent more than five percent of the value of the total assets of an SG Trust. Applicants request an exemption under section 6(c) from section 12(d)(3) to the extent necessary to permit SG Cowen to make the initial deposit of Portfolio Puts and Index Options into each SG Trust.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the SG Trusts' holdings of Portfolio Puts and Index Options will not raise these concerns. Applicants state that neither the Portfolio Puts nor the Index Options will subject an SG Trust to the entrepreneurial risks of an investment in a general partnership interest in a securities related issuer. In addition, Applicants assert that there will be no conflicts of interest or potential for reciprocal practices because the Portfolio Puts and Index Options will be purchased from the derivatives dealer offering the best value on the Portfolio Puts and Index Options, and the Portfolio Puts and Index Options will be deposited with an SG Trust before sales of an SG Trust's Shares are effected. In addition, each SG Trust will have a fixed portfolio.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires, in pertinent part, that a registered investment company have a net worth of at least \$100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a-3 under the Act exempts from section 14(a) UITs that meet certain conditions in recognition of the fact that once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a-3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement,

provided that the UIT holds at least \$100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the SG Trusts from the requirements of section 14(a), provided that each SG Trust complies with all conditions of rule 14a-3 under the Act, other than the condition that all portfolio investments be limited to "eligible trust securities." Applicants assert that while each SG Trust will be registered as a closed-end management investment company, the SG Trusts will have the characteristics of UITs. Investors in an SG Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio. Applicants believe therefore, that there will be no need for an ongoing commitment on the part of the underwriter.

D. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants assert that section 17(a) precludes: (a) An SG Trust from purchasing a Portfolio from SG Cowen; (b) SG Paris from making payments under the Portfolio Puts and Index Options and/or exercising the Portfolio Calls upon the termination of any SG Trust; (c) SG Paris from purchasing the Portfolio Calls, and (d) SG Paris from writing the Portfolio Puts and Index Options deposited with any SG Trust. Applicants request an exemption under sections 6(c) and 17(b) to permit each of these proposed transactions.

3. Applicants assert that given the static nature of the Portfolio, any overreaching by SG Paris would reduce the returns that an SG Trust is able to offer shareholders and would make the SG Trusts a relatively less attractive alternative to competing products. Applicants note that they are only seeking relief with respect to the initial purchase of and deposit of the underlying securities (and the sale of

the Portfolio Calls and deposit of the obligations under the Portfolio Calls) and the exercise of the Derivatives upon the termination of the SG Trust, and not with respect to an ongoing course of business. Consequently, the terms of the components of the Portfolio and of their purchase will be fully disclosed to potential investors prior to their making an investment decision. Applicants also state that since there are relatively few equity derivatives dealers that can write instruments such as the Derivatives and since SG Paris is one of the largest participants in that market, the requested relief will help promote competition and allow the SG Trusts to obtain more favorable terms on the various Derivatives.

4. Applicants also assert that SG Cowen will purchase Portfolio Puts and Index Options from SG Paris and sell Portfolio Calls to SG Paris only if the value offered by SG Paris on the relevant Derivative is more favorable than the value offered by Unaffiliated Bidders. Applicants state that the proposed bidding procedures for Derivatives will be designed to ensure that the bidding or offering process with respect to a Derivative is conducted in a neutral manner. Applicants state that the Group's roles as sponsor, principal underwriter, and bidder/offeree for the Derivatives will not give it an advantage in structuring the Derivatives or assessing their value. Applicants state that the participants in the over-the-counter options markets are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates, all of which employ similar valuation models and technology to price options. Furthermore, applicants state that prospective bidders will have a copy of an SG Trust's prospectus and a draft of the relevant Derivative a reasonable amount of time prior to the day the final bids are due. Applicants assert that the Portfolio Puts and Portfolio Calls are typical over-the-counter options, and although the Index Options will not be typical over-the-counter options, they will not be of such a customized nature as to make it unlikely for other broker-dealers or financial institutions to submit offers. The form of each Derivative will be similar to other types of Derivatives used in privately negotiated transactions, and since all of the Derivatives' terms will have been set, other than price, applicants assert that the bidding/offering procedure has been made as simple as possible. Accordingly, applicants state that the

notice period and information provided in the bidding/offering process should be sufficient to ensure competitive, bona fide bids/offers.

5. Applicants believe that the safeguards set forth in the application are sufficient to ensure that neither SG Cowen nor SG Paris will be able to overreach any SG Trust to the detriment of that SG Trust or its shareholders, and that the proposed transactions will be reasonable and fair, consistent with the general policy of the relevant SG Trust, and consistent with the general purposes of the Act. Applicants also 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.

Applicants' Conditions

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

1. Prior to recommending to the Board that an SG Trust purchase a Portfolio Put or Index Option from or sell a Portfolio Call to, SG Paris, an Independent Agent will conduct a competitive bidding process in which the Independent Agent solicits bids or offers on each type of Derivative form at least three Unaffiliated Bidders. At a reasonable amount of time prior to the date bids are to be submitted, the Independent Agent will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for the bidder to include audited financial statements in the SG Trust's registration statement, a copy of the draft prospectus of the SG Trust, and a draft of the terms of the relevant Derivative. No bidder, including SG Paris, will have access to any bids until after the respective Derivatives have been purchased or sold. An SG Trust may not purchase a Portfolio Put or Index Option from or sell a Portfolio Call to SG Paris unless two bona fide bids have been received for the relevant Derivative from Unaffiliated Bidders.

2. If the Independent Agent recommends that the Board approve the purchase or sale of a Derivative in a transaction with SG Paris, the Independent Agent must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Board will represent an SG Trust in any negotiations relating to a Derivative purchased from or sold to SG Paris, including the negotiation of the final terms of the Derivative and any negotiations with SG Paris in

conjunction with a default on a Derivative.

4. The purchase or sale of a Derivative in a transaction with SG Paris will be subject to approval by the Board, including a majority of Independent Trustees, who will determine that the purchase or sale of the Derivative is in the best interests of the SG Trust and its shareholders and meets the standards specified in section 17(b) of the Act. In considering the purchase and sale of the Derivatives, the Board will determine that (a) the offer price on a Portfolio Put and the bid price on a Portfolio Call will maximize the Net Premium, and (b) the offer price on an Index Option will maximize the return to the SG Trust. In the event that SG Paris and an Unaffiliated Bidder both submit the best bid for a particular Derivative, the bidders will be permitted to submit another bid. If the bids are still the same, the relevant Derivative will not be purchased from or sold to SG Paris, except as described below. Under normal circumstances, the Board will approve the purchase of the Portfolio Put and the sale of the Portfolio Call to the bidders offering the best price on each. However, to avoid potential adverse tax consequences, the Portfolio Call will not be sold to the same entity from which the Portfolio Put is purchased. Accordingly, if the same bidder offers the best price on both the Portfolio Call and the Portfolio Put, the Board will consider the second most favorable bids on both the Portfolio Call and Portfolio Put, and select the Derivatives that would maximize the Net Premium. In the event that the next best bid on either the Portfolio Call or Portfolio Put would generate an identical Net Premium and SG Paris has offered the next best bid on either the Portfolio Call or Portfolio Put, the Board will approve the purchase of the Portfolio Put from or sale of the Portfolio Call to the Unaffiliated Bidder. All Board findings relating to the purchase and sale of the Derivatives, and the basis for the findings, will be reflected in the Board minutes. The terms of the Derivatives will not be subject to any material modification without the approval of the Board, including a majority of the Independent Trustees, after the purchase and sale of the Derivatives have been approved.

5. SG Paris will not purchase or sell a Derivative to an SG Trust on less favorable terms than for similar transactions with unaffiliated parties that are similarly situated to the SG Trust.

6. The Administrator will immediately report any default on either a Portfolio Put or Index Option to the

Board. The Board, including a majority of Independent Trustees, will evaluate the default and will determine the amounts due to the SG Trust. The SG Trust will not settle any default for less than the full amount determined by the Board without obtaining a further exemptive order from the Commission.

7. No less than a majority of a Board will consist of Independent Trustees.

8. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0-1 under the Act.

9. The administrator, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (a) An explanation of the basis upon which the Independent Agent selected prospective bidders; (b) a list of all bidders to whom a bid invitation letter (or similar electronic invitation) was sent and copies of the bid invitation letters and accompanying materials; (c) copies of all bids received, including the winning bids; (d) the materials provided to the Board in connection with the Independent Agent's recommendation regarding the sale and purchase of each Derivative; (e) the final price and terms of each Derivative with an explanation of the reason the purchase or sale is considered an affiliated transaction; and (f) records of any negotiations with the counterparties to the Derivatives, including with respect to any default in connection with a Portfolio Put or Index Option and the satisfaction of any obligations to an SG Trust. All such records will be maintained for a period ending not less than six years after the Termination Date, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

10. The underwriting allocations of an SG Trust will be determined at least one business day prior to the day the Independent Agent invites financial institutions to bid and will not in any way be based on participation in the bidding process.

11. The applicants will not have any involvement with respect to the Independent Agent's selection of prospective bidders or the bids approved by the Board and will not attempt to influence or control in any way the sale or purchase of the Derivatives aside from placing a bid for each Derivative.

12. Each SG Trust will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

13. No investment company whose shares are purchased by an SG Trust

will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

14. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Shares of an SG Trust will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

15. The SG Trusts and SG Cowen will comply in all respects with the requirements of rule 14a-3 under the Act, except that the SG Trusts will not restrict their portfolio investments to "eligible trust securities."

16. No fee, spread, or other remuneration shall be received by the SG Cowen in connection with the deposit of the Reference Securities and Derivatives with an SG Trust.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47936; File No. SR-NASD-2003-57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendment No. 1, and Amendment No. 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)

May 28, 2003.

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 April 8, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On April 16, 2003, NASD submitted Amendment No. 1 to the proposed rule change.³ On April 30,

2003, NASD submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to revise the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") to: (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of section 14 (Disclosure Questions) of the Form U-4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"); (2) add a Disclosure Reporting Page ("DRP") and a question to the Form U-5 that parallels the Form U-4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes to facilitate accurate reporting and filing.

The text of the proposed rule change and the Exhibits related thereto are available at the principal offices of NASD and at the Commission.

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

In its filing with the Commission, NASD included statements concerning the purpose of and the 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. NASD has prepared

Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD stated that the rule filing would be effective on July 14, 2003, instead of June 30, 2003.

⁴ See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division, SEC, dated April 29, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD amended the filing to correct typographical errors on pages 51 of 100 and 68 of 100 of the filing. On page 51 of 100, the NASD added the following language to renumbered question 14D(1)(e): "denied, suspended, or revoked your registration license or." On page 68 of 100, the NASD eliminated the word "or" before "commodities exchange."

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. Purpose⁵

The Form U-4 is the Uniform Application for Securities Industry Registration or Transfer. Representatives of broker-dealers and investment advisers must use this form to become registered in the appropriate jurisdictions and/or with appropriate self-regulatory organizations ("SROs"). The Form U-5 is the Uniform Termination Notice for Securities Industry Registration. Broker-dealers and investment advisers must use this form to terminate registration of an individual in the various SROs and jurisdictions. (Form U-4 and Form U-5 are together hereinafter referred to as the "Forms.")

The proposed revisions to the Forms would (1) Add disclosure questions to the "Regulatory Disciplinary Actions" subsection of Section 14 (Disclosure Questions) of the Form U-4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of statutory disqualification in the Act created by passage of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U-5 that parallels the DRP and Form U-4 question relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make certain technical, clarifying, and conforming changes on the Forms to facilitate accurate reporting.⁶

⁵ The NASD requested that the Commission make certain non-substantive organizational changes to the Purpose section (and the corresponding numbered introductory text throughout the notice). In addition, the NASD requested that the Commission include footnotes in the notice that specifically provide the new definitions for the following new defined Form U-4 terms: (1) "Affiliated Firm;" (2) "Federal Banking Agency;" and (3) "Final Order." Telephone conference between Shirley H. Weiss, Office of General Counsel, NASD Regulation, Richard E. Pullano, Chief Counsel and Associate Director, CRD/Public Disclosure, NASD Regulation, Elizabeth Badawy, Senior Policy Liaison, Division, Commission, and Christopher B. Stone, Special Counsel, Division, Commission (May 22, 2003).

⁶ On April 6, 2003, the North American Securities Administrators Association, Inc. ("NASAA") voted to approve the proposed listed Forms revisions at its Membership meeting.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to