

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26046; 812-12768]

Claymore Securities, Inc. and Claymore Securities Defined Portfolios; Notice of Application

May 14, 2003.

AGENCY: Securities and Exchange Commission ("Commission").**ACTION:** Notice of an application under: (i) section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 14(a) and 19(b) of the Act and from rule 19b-1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(f) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

SUMMARY OF APPLICATION: Applicants Claymore Securities Inc. ("Sponsor"), Claymore Securities Defined Portfolios (the "Claymore Trust"), as well as any unit investment trust ("UIT") for which the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor serves as the sponsor in the future (together with the Claymore Trust, the "Trusts") and any presently outstanding or subsequently issued series of the Trusts (each, a "Trust Series") request an order: (a) under section 12(d)(1)(f) of the Act to permit each Trust Series to offer and sell to the public units ("Units") with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b-1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others \$100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

FILING DATES: The application was filed on January 30, 2002, and amended on May 8, 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 June 9, 2003 and should be accompanied by proof of service on the 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: Nicholas Dalmaso, c/o Claymore Securities, Inc., 210 North Hall Street, Wheaton, Illinois 60187.**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Todd F. Kuehl, 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. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor to the Claymore Trust and any future Trusts.¹ The Claymore Trust is a UIT registered under the Act and each Trust Series is organized under a trust indenture between the Sponsor, a banking institution or trust company as trustee ("Trustee") and an evaluator. The Trustee, the Sponsor or an affiliate may serve as the evaluator. The evaluator, will be a "qualified evaluator" as defined in rule 22c-1(b)(2) under the Act. Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies ("Funds"), or contracts and monies for the purchase of shares of the Funds. The Funds may be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange ("Exchange Funds"). In addition, a Trust Series may invest a portion of its assets directly in equity

¹ The Claymore Trust is currently the only existing Trust intending to rely on the requested order. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

securities, fixed income securities and other investment instruments (together with the Funds, the "Securities").

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme (together with any other Securities selected in accordance with the Sponsor's asset allocation model or investment theme for the particular Trust Series). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust Series' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. Shares of each of the Funds (except closed-end Funds or Exchange Funds) will be purchased by or deposited into any Trust Series at their public offering price (*i.e.*, such Funds' net asset values, plus any applicable sales loads). Shares of closed-end Funds and Exchange Funds will be purchased by or deposited into a Trust Series at their market value as determined by an evaluator. Investors in the Trust Series ("Unitholders") will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. The Trustee may receive service fees under a rule 12b-1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by the Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series' expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

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 acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. 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 the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. 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.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees charged with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules applicable to a fund of 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). 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.

6. Applicants state that, with respect to Securities issued by closed-end Funds which are traded on the open market, no front-end sales load, contingent deferred sales charges, 12b-1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of the Securities by a Trust Series. Similarly, no front-end sales loads, contingent deferred sales charges or redemption fees will be assessed in connection with the purchase or sale of Securities of an Exchange Fund, but certain Exchange Funds may assess a rule 12b-1 fee. Although the Trust Series will likely incur brokerage commissions in connection with their open market purchases of Securities of closed-end Funds or Exchange Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of Securities of the Affiliated Funds that are open-end investment companies or UITs by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of 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. Section 17(b) of the Act

provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that Securities of open-end Funds and UITs will be sold to the Trust Series at the Fund's public offering price (*i.e.*, such Fund's net asset value, plus any applicable sales loads). As a result, Applicants believe that the transactions in Securities of Affiliated Funds, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person involved. Furthermore, Applicants believe that the proposed transactions will be consistent with the policies of the Trust Series as recited in the registration statements for the Trust Series.

C. Section 14(a) of the Act

1. Section 14(a) of the Act requires in substance that a registered investment company have \$100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than \$100,000 of Securities in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because the Trust Series will invest all or a portion of their assets in Fund shares (or in a combination of Fund shares and other Securities) and such Fund shares and certain equity Securities are not eligible trust securities. Pursuant to section 6(c) of the Act, Applicants request an exemption from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all

respects with the requirements of rule 14a-3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

D. Section 19(b) of the Act

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Trust Series do not limit their investments to "eligible trust securities," the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b-1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares, or sales of closed-end Fund shares, Exchange Fund shares, or other portfolio Securities, to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b-1. Applicants assert that the abuses that section 19(b) and rule 19b-1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares or other portfolio Securities would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

Applicants' Conditions

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

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

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series 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).

3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Trust Series will not restrict their

portfolio investments to "eligible trust securities."

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b-1 fees.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-12609 Filed 5-19-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 25071, May 9, 2003.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting was held on Thursday, May 15, 2003 at 5:30 p.m.

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

The subject matter of the Closed Meeting held on Thursday, May 15, 2003 was: Litigation Matter.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who had an interest in the matter also attended the Closed Meeting.

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: May 15, 2003.

Jonathan G. Katz,
Secretary.

[FR Doc. 03-12796 Filed 5-16-03; 4:10 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47856; File No. SR-NASD-2003-78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

May 14, 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 May 2, 2003, the National Association of Securities Dealers, Inc. ("NASD") 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, NASD is requesting that the Commission grant accelerated approval of the proposed rule change.

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

NASD is proposing to amend Rule 6230 to reduce the period to report a transaction in a TRACE-eligible debt security from 75 minutes to 45 minutes. Rule 6230 is one of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.³

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6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6230. Transaction Reporting

(a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within [one hour and fifteen]45 minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD corrected a typographical error in the text of the proposed rule change in a telephone conversation between Sharon K. Zakula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on May 13, 2003.