

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