

distribution fees. The Asset Allocation Series' Class I shares and Class II shares will be subject to Rule 12b-1 fees, in accordance with the normal equity fund Rule 12b-1 fees for funds in the Franklin Templeton Group of Funds. Thus, at all times, there will be no duplication of distribution fees paid by shareholders of FTFM.

7. Applicants assert that redemption threats and a concomitant risk of lost advisory fees are not a problem in the context of a fund of funds structure in which all of the funds are members of the same fund family. FTFM would be part of the same fund complex as the Underlying Funds and will only acquire shares of the Underlying Funds. Because the investment advisers to the Underlying Funds, as well as the Asset Allocation Series, would be affiliated, a redemption by an Asset Allocation Series from one Underlying Fund would simply lead to the placing of the proceeds into another Underlying Fund.

8. In addition to not containing the actual and potential abuses which led to the enactment of section 12(d)(1), applicants believe that the structure of the Asset Allocation Series would provide a number of benefits to its shareholders, including: (a) expense ratios only slightly higher than the weighted average of the expense ratios which an investor would pay were he or she to invest the same amount in a combination of Underlying Funds; (b) immediate and broad diversification resulting from the Asset Allocation Series' shareholders access to the existing investment portfolios of the Underlying Funds; and (c) efficient trading practices resulting from the Underlying Funds' ability to engage in block trading, which would enable them to acquire securities at more favorable prices than would smaller transactions.

#### B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. The Asset Allocation Series and the Underlying Funds may be considered affiliated persons because they share common officers and/or directors/trustees. An Underlying Fund's issuance of its shares to the Asset Allocation Series may be considered a sale prohibited by section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction 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 provisions of the Act. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).<sup>1</sup>

#### Applicants' Conditions

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

1. FTFM and each Underlying Fund will be part of the same "group of investment companies," as defined in rule 11a-3 under the Act.

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

3. A majority of the trustees of FTFM will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the Board of Trustees of FTFM, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of FTFM.

5. Any sales charges or service fees charged with respect to securities of the Asset Allocation Series, when aggregated with any sales charges or service fees paid by the Asset Allocation Series with respect to shares of the Underlying Funds, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each FTFM portfolio and each of its Underlying Funds; monthly purchases and redemptions (other than by exchange) for each FTFM portfolio and each of its Underlying Funds; monthly exchanges into and out of each FTFM portfolio and each of its Underlying Funds; month-end

<sup>1</sup> Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c) frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

allocations of each FTFM portfolio's assets among its Underlying Funds; annual expense ratios for each FTFM portfolio and each of its Underlying Funds; and a description of any vote taken by the shareholders of any Underlying Funds, including a statement of the percentage of votes cast for and against the proposal by FTFM and by the other shareholders of the Underlying Funds. Such information will be provided as soon as reasonably practicable following each fiscal year-end of FTFM (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Rel. No. IC-21965; 812-10094]

#### National Equity Trust; Notice of Application

May 20, 1996.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** National Equity Trust.

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order on behalf of itself and subsequently established series (the "Series") to permit each Series to invest up to 10% of its total assets in securities of an issuer that derives more than 15% of its gross revenues in its most recent fiscal year from securities related activities.

**FILING DATE:** The application was filed on April 22, 1996.

**HEARING OR NOTIFICATION OF HEARING;** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 14, 1996, and should be accompanied by proof of service on applicant, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Prudential Securities Incorporated, One New York Plaza, New York, New York 10292, Attn: Richard R. Hoffmann.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574, or David M. Goldenberg, 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 SEC's Public Reference Branch.

#### Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Prudential Securities Incorporated is applicant's depositor (the "Sponsor"). The Sponsor currently intends (but is not obligated) to offer a new Series at about the beginning of each calendar quarter.

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately 10%, but in no event more than 10.5%,<sup>1</sup> of the value of its total assets in each of the ten common stocks in the Dow Jones Industrial Average (the "DJIA") with the highest dividend yields (the "Selected Ten"). Dividend yields will be calculated by annualizing the last quarterly or semiannual ordinary dividend distributed on a security and dividing the result by the market value of the security at the close of the New York Stock Exchange either on or shortly before such Series' initial date of deposit.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of *The Wall Street Journal*. The

DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor, and does not participate in any way in the creation of any series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor has no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the number of shares of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the Selected Ten.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions and at termination of the trust. The Sponsor has no discretion as to when securities will be sold except that it is authorized to direct the trustee to sell securities upon failure of the issuer of a security in the trust to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that, in the opinion of the Sponsor, would make retention of such securities in the trust detrimental to the interests of the unit holders, and to pay any deferred sales charge. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

#### Applicant's Legal Analysis

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1(b) exempts from section 12(d)(3) purchases by an investment company of securities of an issuer that derived more than 15% of its gross revenues in its most recent

fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3-1(c) prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

2. Applicant seeks an exemption under section 6(c) from the provisions of section 12(d)(3) to permit any Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3-1, except for the 5% limitation on the amount of assets that may be invested in securities of issuers that derived more than 15% of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicant asserts that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with applicant or the Sponsor, and must also qualify as one of the Selected Ten as calculated by the objective formula.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant

<sup>1</sup> The Sponsor will attempt to purchase equal values of each of the ten common stocks for a Series' portfolio and may purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, the Sponsor may choose to purchase securities of a securities related issuer which represent over 10%, but in no event more than 10.5%, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

believes that it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is 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.

#### Applicant's Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

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

Margaret H. McFarland,

Deputy Secretary.

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#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definitions of Bona Fide Independent Market and Bona Fide Independent Market Maker

May 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1996, 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 the NASD. 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

The NASD is herewith filing a proposed rule change to Rule 2720 of the NASD's Conduct Rules to amend the definitions of "Bona fide independent market" and "Bona fide independent market maker." Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

#### Conduct Rules

##### 2000. Business Conduct

\* \* \* \* \*

##### 2700. Securities Distributions

##### 2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

###### (a) General

(1) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Rule.

(2) No member or persons associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Rule.

###### (b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) and (2) No change.

(3) Bona fide independent market—a market in a security which:

(A) Is registered pursuant to the provisions of Sections 12(b) or 12(g) of the Act or issued by a company subject to Section 15(d) of such Act, unless exempt from those provisions;

[(B) Has an aggregate trading volume for the 12 months immediately preceding the filing of the registration statement of at least 100,000 shares;]

[(C) Has outstanding for the entire 12 month period immediately preceding the filing of the registration statement, a minimum of 250,000 publicly held shares; and]

[(D) In the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least 30 days immediately preceding the filing of the registration

statement and the effective date of the offering.]

(B) *Has a market price as of the close of trading on the trade date immediately preceding filing of the registration statement or offering circular of five dollars or more per share, and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days immediately preceding the filing of the registration statement or offering circular; and*

(C) *For at least 90 calendar days immediately preceding the filing of the registration statement or offering circular with the Department:*

(i) *Has been listed on and is in compliance with the requirements for continued listing on a national securities exchange; or*

(ii) *Has been listed on and is in compliance with the requirements for continued listing on The Nasdaq Stock Market and has had at least two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement and the effective date of the offering; and*

(D) *For the 90 calendar day period immediately preceding the filing of the registration statement or offering circular:*

(i) *Has an aggregate trading volume of at least 500,000 shares; or*

(ii) *Has outstanding a minimum of 5,000,000 publicly held shares.*

(4) Bona fide independent market maker—a market maker which:

[(A) Continually maintains net capital as determined by Rule 15c3-1 under the Act, of \$50,000 or \$5,000 for each security in which it makes a market, whichever is less;]

[(B) Regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system;]

[(C) Furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request; and]

[(D) Stands ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers.)

(A) *Is registered as a Nasdaq market maker in the security to be distributed pursuant to this Schedule;*

(B) *Is not an affiliate of the entity issuing securities pursuant to paragraph (c) of this Schedule and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement and at the commencement of the distribution, five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest*