

assets to a corresponding series of The Victory Portfolios based on net asset value. Expenses of approximately \$658,050, \$593,457, \$57,930, and \$61,926, respectively, incurred in connection with each reorganization were paid by BISYS Fund Services Ohio Inc., Key Corp and The Victory Portfolios.

*Filing Dates:* Each application was filed on September 23, 1999, and amended on August 18, 2000.

*Applicant's Address:* 580 Walnut Street, Cincinnati, Ohio 45202.

**American Diversified Funds, Inc. [File No. 811-3434]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On September 17, 1999, applicant transferred its assets to Orbitex Growth Fund, a series of the Orbitex Group of Funds, based on net asset value. Expenses of \$36,663 incurred in connection with the reorganization were paid by Orbitex Management, Inc., investment adviser to the acquiring fund.

*Filing Dates:* The application was filed on August 28, 2000, and amended on October 10, 2000.

*Application's address:* c/o Orbitex Group of Funds, 410 Park Avenue, New York, New York 10022.

**USAllianz Funds [File No. 811-9489]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

*Filing Dates:* The application was filed on September 18, 2000, and amended on October 5, 2000.

*Applicant's Address:* 3435 Stelzer Road, Columbus, Ohio 43219.

**CrestFunds, Inc. [File No. 811-4620]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. By May 24, 1999, applicant had transferred its assets to STI Classic Funds based on net asset value. Expenses of \$580,272 incurred in connection with the organization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on October 13, 2000.

*Applicant's Address:* 300 East Lombard Street, Baltimore, Maryland 21202.

**Global Small Cap Fund Inc. [File No. 811-7814]**

*Summary:* Applicant, a closed-end investment company, seeks an order

declaring that it has ceased to be an investment company. On January 27, 2000, applicant transferred its assets to PaineWebber Global Equity Fund, a series of PaineWebber Investment Trust, based on net asset value. Expenses of \$256,900 incurred in connection with the reorganization were paid by applicant.

*Filing Date:* The application was filed on October 19, 2000.

*Applicant's Address:* 51 West 52nd Street, New York, New York 10019-6114.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-28506 Filed 11-6-00; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 65 FR 65034, October 31, 2000.

**STATUS:** Closed meeting.

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

**DATE PREVIOUSLY ANNOUNCED:** October 25, 2000.

**CHANGE IN THE MEETING:** Cancellation of meeting.

The closed meeting scheduled for Thursday, November 2, 2000 at 11:00 a.m. has been cancelled.

Dated: November 2, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00-28581 Filed 11-2-00; 4:16 pm]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [to be published]

**STATUS:** Closed meeting.

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

**DATE PREVIOUSLY ANNOUNCED:** November 1, 2000.

**CHANGE IN THE MEETING:** Cancellation of Meeting.

The closed meeting scheduled for Wednesday, November 8, 2000 at 11 a.m. has been cancelled.

Dated: November 2, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00-28625 Filed 11-3-00; 12:49 pm]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-43501; File No. SR-NASD-00-45]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interpretation Regarding ACT Risk Management Charges, and to Clarify the ACT Risk Management Function**

October 31, 2000.

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> notice is hereby given that on July 31, 2000, the National Association of Securities Dealers ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.<sup>3</sup> 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**

Nasdaq is filing a proposed rule change to NASD Rules 7010 and 6150. The purpose of the proposal is to issue an interpretation regarding Automated Confirmation Transaction Service ("ACT") risk management charges and a clarification regarding the ACT risk management function. Below is the text of the proposed rule change. Proposed new language is in italics.

**Rule 7010. System Services**

(a)-(f) No change.

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

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

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

<sup>3</sup> On August 17, 2000, Nasdaq minor, technical changes to the proposed rule change, none of which were substantive in nature, and none which required the filing of a formal amendment. Telephone conversation among Mary N. Revell, Associate General Counsel, Office of General Counsel, Nasdaq, and Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC and Joseph P. Morra, Special Counsel, Division, SEC.

Transaction Related Charges:

No change.

Risk Management Charges: \$0.035/side and \$17.25/month per correspondent firm (maximum \$10,000/month per correspondent firm)

*IM-7010-1; Risk Management Charges*

*All clearing brokers are provided access to the ACT risk management function for which they are assessed the charges detailed above, unless exempted under the provision detailed below.*

*Self-clearing brokers are not required to pay risk management charges.*

*Clearing brokers that are effectively self-clearing with respect to certain correspondents may seek relief from the requirement to pay ACT risk management charges for trades cleared on behalf of these correspondents. A firm is "effectively self-clearing" if it clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates. Such a firm may choose not to utilize the ACT risk management function for trades cleared on behalf of affiliated correspondents and may seek relief from ACT risk management charges by submitting a letter to Nasdaq containing the following:*

*(1) a detailed description of the firm's corporate structure showing that all affiliates are wholly or majority owned by a common corporate parent;*

*(2) a statement that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT as described in Rule 6150;*

*(3) an acknowledgment that the firm will no longer utilize the ACT risk management function for trades cleared for these affiliated correspondents; and*

*(4) a request for relief from ACT risk management charges. After reviewing the letter to ensure that it addresses all the above elements, Nasdaq will:*

*(1) instruct the NASD Finance Department to cease assessing ACT risk management charges on trades cleared by the firm on behalf of its affiliated correspondents;*

*(2) notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades; and*

*(3) inform NASD Regulation of this new arrangement.*

\* \* \* \* \*

#### **Rule 6150. ACT Risk Management Functions**

*Self-clearing brokers, corresponding clearing brokers, and executing brokers, whether they utilize the ACT risk management function or not, are required to report all clearing-eligible transactions to ACT for ACT risk management functions.*

The ACT system will provide the following risk management capabilities to clearing brokers that have executed an ACT Participants Risk Management Agreement:

(a)-(g) No change.

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

In its filing with the Commission, Nasdaq including statements concerning the purpose of and 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. Nasdaq has prepared 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. Purpose*

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions negotiated over the phone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Nasdaq InterMarket. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services. An integral part of ACT is the risk management function.

The ACT risk management function provides firms that clear for other firms with the capability to establish acceptable levels of credit for their introducing firms. ACT risk management also enables clearing brokers to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.<sup>4</sup> Clearing brokers providing clearing services to correspondent firms are assessed risk management charges of \$0.035 per trade and \$17.25 per month per correspondent firm. Nasdaq recently adopted a new rule, limiting this charge to a maximum of \$10,000 per month per correspondent.<sup>5</sup> Self-clearing brokers

<sup>4</sup> See NASD Rule 6150.

<sup>5</sup> See Securities Exchange Act Release No. 42984 (June 27, 2000), 65 FR 41119 (July 3, 2000) (SR-NASD-00-35).

without correspondents have no reason to utilize the ACT risk management function, given their lack of exposure, and are not assessed risk management charges.

The ACT service was implemented for self-clearing firms in March 1990.<sup>6</sup> The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990;<sup>7</sup> the ACT risk management service charge was implemented in November 1990.<sup>8</sup>

Recently, Nasdaq received two inquiries from clearing brokers seeking relief from the ACT risk management charges for trades cleared for affiliated correspondents. These clearing firms have entered into new relationships with previously unaffiliated broker-dealer firms. As a result, all of the affiliated firms, including the clearing firm and the correspondent firm(s), are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliated firms. The clearing firm in such an arrangement has an internal risk management system that allows it to monitor the capital exposure of the consolidated entities. These clearing firms have represented to Nasdaq that they believe they are effectively self-clearing firms, and should be treated as such for purposes of application of the requirement to pay ACT risk management charges.

Nasdaq believes there is merit to this position, and proposes to issue a responsive interpretation regarding ACT risk management charges. The proposed interpretation would reiterate Nasdaq's long-standing position that clearing brokers are required to pay ACT risk management charges and that self-clearing brokers are not required to pay these charges. The interpretation would further state that firms that are effectively self-clearing are not required to pay ACT risk management charges, subject to the provisions set forth in the interpretation. Nasdaq supports the view that a firm that clears for affiliated correspondents that are wholly or majority owned by a common corporate parent, which will be solely liable for any credit problems encountered by the affiliates, should be effectively considered self-clearing. Nasdaq believes that such a firm should be able

<sup>6</sup> See Securities Exchange Act Release No. 27229 (Sept. 8, 1989), 54 FR 38484 (Sept. 18, 1989) (SR-NASD-89-25).

<sup>7</sup> See Securities Exchange Act Release No. 28583 (Oct. 26, 1990), 55 FR 46120 (Nov. 1, 1990) (SR-NASD-89-25).

<sup>8</sup> See Securities Exchange Act Release No. 28595 (Nov. 5, 1990), 55 FR 47161 (Nov. 9, 1990) (SR-NASD-90-57).

to choose whether or not to participate in the ACT risk management function with respect to trades cleared on behalf of the affiliates, as long as it has an effective internal risk management system.

Under the interpretation, a firm that chooses not to participate in the ACT risk management function will be able to seek an exemption from the ACT risk management charge for trades cleared on behalf of affiliated correspondents by submitting a letter to Nasdaq. The letter must describe in detail the clearing firm's ownership structure, state that the firm will use an internal risk management capability to monitor the trading activities and risk exposure of its affiliated correspondents and meet its financial and operational obligations under the federal securities laws and NASD rules that provides risk management functions comparable to those provided by ACT, acknowledge that it will no longer utilize the ACT risk management function for trades cleared for its affiliates, and request an exemption from the ACT risk management charge. After reviewing the letter to ensure that it addresses all of the above, Nasdaq will instruct the NASD Finance Department that it should no longer assess ACT risk management charges on trades cleared by the firm on behalf of its affiliates, notify ACT that the firm will no longer utilize the ACT risk management function for the affiliated correspondents' trades, and inform NASD Regulation of this new arrangement.

Nasdaq proposes to make the interpretation effective immediately after SEC approval. Firms that submit a satisfactory letter to Nasdaq requesting relief from ACT risk management charges within 90 days of the effective date of the interpretation will no longer be assessed future ACT risk management charges and will receive a credit for any such fees paid for ACT risk management services after April 1, 2000. Firms that request relief from ACT risk management charges 90 days or more after the effective date of the interpretation will not be assessed ACT risk management charges beginning on the first day of the first month after a satisfactory letter is received by Nasdaq.

Nasdaq also proposes to revise NASD Rule 6150, ACT Risk Management Functions, to explicitly state that clearing brokers and executing brokers must report all clearing-eligible transactions to ACT for risk management functions. This transaction information is included in Nasdaq's real-time database of correspondent trading activity. Submission of complete

clearing information to ACT is essential in order for Nasdaq to be able to generate accurate ACT risk management function reports and alerts.

Nasdaq is proposing this revision to respond to arguments that have been made by member firms that participation in ACT risk management is optional. Nasdaq believes those member firms have based their position on an erroneous interpretation of a sentence in a Notice to Members ("NTM") issued in 1990 announcing SEC approval of the ACT risk management functions. In pertinent part, NTM 90-80 states:

Using ACT Risk Management, *clearing firms can choose* to monitor purchase and sale activity, establish dollar thresholds for the trading day, examine large trades, establish and delete clearing relationships, and develop an internal database through a real-time data feed of correspondent activity. (Emphasis added.)

This sentence establishes that clearing firms can choose to use any of the available ACT risk management functions to monitor correspondent activity; it does not mean that participation in ACT risk management is optional. Nasdaq's long-standing position is that clearing firm participation in ACT risk management is mandatory. However, to resolve any ambiguities, Nasdaq is proposing to revise NASD Rule 6150, ACT Risk Management Functions, to make this requirement explicit.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>9</sup> in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. The proposed rule change also is consistent with Section 15A(b)(5) of the Act<sup>10</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

## B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (9) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-45 and should be submitted by November 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland**

*Deputy Secretary.*

[FR Doc. 00-28507 Filed 11-6-00; 8:45 am]

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).