

that are allocated to high yield securities.

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 such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act. Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that the Balanced Fund's investment policies contemplate that its investments will include direct investments in equity securities, bonds, and other securities.

3. Section 12(d)(1)(J) 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, the exemption is consistent with the public interest and the protection of investors. Applicants

request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Balanced Fund and other Upper Tier Funds to invest in Underlying Funds and directly in securities as proposed, would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

B. Spectrum Fund Order

1. Applicants also request an order under section 12(d)(1)(J) of the Act and under sections 6(c) and 17(b) of the Act to amend the Spectrum Fund Order and permit an Upper-Tier Fund in which a Spectrum Fund invests pursuant to the Spectrum Fund Order ("Spectrum Underlying Fund") to purchase shares of an Underlying Fund in excess of the limits contained in section 12(d)(1)(A)(i) of the Act but within the limits in section 12(d)(1)(A)(ii) and (iii).

2. Applicants believe that the proposed modification of the Spectrum Fund Order satisfies the standards of sections 12(d)(1)(J), 6(c), and 17(b). The requested amendment would allow a Spectrum Underlying Fund to own in excess of 3% of the outstanding voting securities of IHY Fund or another Underlying Fund. Applicants submit that any concerns about undue influence underlying section 12(d)(1) of the Act are addressed by the fact that the Spectrum Underlying Fund and the IHY Fund or another Underlying Fund will be in the same group of investment companies. Since the Spectrum Underlying Fund will remain subject to the limits in section 12(d)(1)(A)(ii) and (iii) when it invests in the IHY Fund or another Underlying Fund, applicants submit that concerns about complex fund structures and layering of fees will not be present. Applicants also submit that the conditions to the Spectrum Fund Order (as they would be modified) and the conditions to the requested order further would address these concerns.

Applicants' Conditions

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

1. Before approving any advisory contact under section 15 of the Act, the board of directors/trustees ("Board") of the Balanced Fund or any Upper Tier Fund, including a majority of the directors/trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under such contract are based on services provided that are in addition to, rather

than duplicative of, services provided pursuant to the 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 the Balanced Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Balanced Fund or an Upper Tier Fund from investing directly in securities as described in the application.

Applicants also agree that conditions number 2 and 5 to the Spectrum Fund Order would be modified as follows (for purposes of these conditions, the defined terms have the same meanings as in the Spectrum Fund Order):

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, except to the extent such Underlying Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to acquire securities of one or more registered open-end investment companies in the same group of investment companies as the Underlying Fund (a) that are money market funds or short-term bond funds for short-term cash management purposes; or (b) within the limits in section 12(d)(1)(A)(ii) and (iii) of the Act.

5. Any sales charges or service fees charged with respect to securities of Spectrum Fund, when aggregated with (i) any sales charges and service fees paid by Spectrum Fund with respect to securities of the Underlying funds, and (ii) any sales charges and service fees paid by an Underlying Fund with respect to securities acquired as permitted in condition 2(b), shall not exceed the limits set forth in Rule 2830 of the Rules of Conduct of the National Association of Securities Dealers, Inc.

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

Margaret H. McFarland,

Deputy Secretary.

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