

acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire shares of the iShares Funds ("iShares") and the iShares Funds and any broker or dealer to sell iShares to the Investing Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over the iShares Funds. To limit the control that an Investing Fund may have over an iShares Fund, applicants propose a condition prohibiting an Advisor, or a sponsor to an Investing Trust ("Sponsor"), and certain affiliates from controlling (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the iShares Funds, applicants propose conditions 2, 3, 4, 6, 7 and 8, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an iShares Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Investing Fund understands the implications of an investment by an Investing Fund in an iShares Fund under the requested order, each Investing Fund and iShares Fund will execute an agreement stating that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. In addition, an Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by an Investing Management Company or Investing Trust in an amount at least equal to any compensation received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the investment adviser, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers, Inc. ("NASD").

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that an iShares Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require an Investing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in ETFs and to disclose, in "plain English," in its prospectus the unique characteristics of the Investing Fund investing in ETFs, including, but not limited to, the expense structure and any additional expenses of investing in ETFs.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting

securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that an iShares Fund could become an affiliated person of an Investing Fund if the Investing Fund acquires more than 5% of an iShares Fund's outstanding voting securities. Although applicants believe that most Investing Funds will purchase iShares in the secondary market and not directly from an iShares Fund, an Investing Fund that owns 5% or more of an iShares Fund might seek to transact directly with an iShares Fund.³ In light of this possible affiliation, section 17(a) could prevent an iShares Fund from selling iShares to and redeeming iShares from an Investing Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such 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.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of iShares directly from an iShares Funds will be based on the net asset value of the iShares Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund and iShares Fund and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and submit that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

³ iShares are only purchased and redeemed directly from an iShares Fund in large blocks of iShares (generally between 50,000 and 600,000 shares) called "creation units."