

affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. In addition, applicants represent that a Fund of Funds' prospectus contains and will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in the Underlying Funds.

#### **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 and any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Fund of Funds and the Affiliated Underlying Funds may be deemed to be under common control by virtue of having the same Adviser. Applicants also state that a Fund of Funds and an Underlying Fund might become affiliated persons if the Fund of Funds acquires more than 5% of the Underlying Fund's outstanding voting securities. In light of this possible affiliation, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from the Fund of Funds.

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 (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) 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 provisions 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 the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds as set forth in each Fund of Funds' registration statement, the policies of each Underlying Fund, and with the general purposes of the Act.

#### *Applicants' Conditions*

1. (a) The Adviser, (b) any person controlling, controlled by, or under common control with the Adviser, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser (collectively, the "Group") will not control (individually or in the aggregate) a Non-Affiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Non-Affiliated Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Non-Affiliated Underlying Fund, the Group will vote its shares of the Non-Affiliated Underlying Fund in the same proportion as the vote of all other holders of the Non-Affiliated Underlying Fund's shares.

2. The Fund of Funds and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Fund of Funds Affiliate") will not cause any existing or potential investment by the Fund of Funds in shares of a Non-Affiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Non-Affiliated Underlying Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Non-Affiliated Underlying Fund Affiliate").

3. The Board of the Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to ensure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund

of Funds Affiliate from a Non-Affiliated Underlying Fund or a Non-Affiliated Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by the Fund of Funds in the securities of a Non-Affiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of each Non-Affiliated Underlying Fund, including a majority of the disinterested directors or trustees, will determine that any consideration paid by the Non-Affiliated Underlying Fund to the Fund of Funds or a Fund of Funds Affiliate (other than a GS Group entity) in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Non-Affiliated Underlying Fund; (b) is within the range of consideration that the Non-Affiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Fund of Funds or Fund of Funds Affiliate will cause a Non-Affiliated Underlying Fund to purchase a security from an underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (other than a GS Group entity) is referred to as an "Affiliated Underwriting."

6. The board of directors or trustees of a Non-Affiliated Underlying Fund, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases by the Non-Affiliated Underlying Fund of securities in Affiliated Underwritings once an investment by the Fund of Funds in the securities of the Non-Affiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate (other than a GS Group entity). The board of directors or trustees of the Non-Affiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds