

intended by the policies and provisions of the Act.

2. Applicants state that because SG Pairs is an affiliated person of SG Cowen, a promoter of the SG Trust, the exemption afforded by rule 12d3-1 would not be available to an SG Trust with respect to the purchase of Portfolio Puts and/or Index Options from SG Paris at the time SG Cowen deposits the Portfolio into an SG Trust. Applicants also state that it is possible that the Index Options or the Portfolio Puts may represent more than five percent of the value of the total assets of an SG Trust. Applicants request an exemption under section 6(c) from section 12(d)(3) to the extent necessary to permit SG Cowen to make the initial deposit of Portfolio Puts and Index Options into each SG Trust.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the SG Trusts' holdings of Portfolio Puts and Index Options will not raise these concerns. Applicants state that neither the Portfolio Puts nor the Index Options will subject an SG Trust to the entrepreneurial risks of an investment in a general partnership interest in a securities related issuer. In addition, Applicants assert that there will be no conflicts of interest or potential for reciprocal practices because the Portfolio Puts and Index Options will be purchased from the derivatives dealer offering the best value on the Portfolio Puts and Index Options, and the Portfolio Puts and Index Options will be deposited with an SG Trust before sales of an SG Trust's Shares are effected. In addition, each SG Trust will have a fixed portfolio.

#### *C. Section 14(a) of the Act*

1. Section 14(a) of the Act requires, in pertinent part, that a registered investment company have a net worth of at least \$100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a-3 under the Act exempts from section 14(a) UITs that meet certain conditions in recognition of the fact that once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a-3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement,

provided that the UIT holds at least \$100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the SG Trusts from the requirements of section 14(a), provided that each SG Trust complies with all conditions of rule 14a-3 under the Act, other than the condition that all portfolio investments be limited to "eligible trust securities." Applicants assert that while each SG Trust will be registered as a closed-end management investment company, the SG Trusts will have the characteristics of UITs. Investors in an SG Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio. Applicants believe therefore, that there will be no need for an ongoing commitment on the part of the underwriter.

#### *D. Section 17(a) of the Act*

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants assert that section 17(a) precludes: (a) An SG Trust from purchasing a Portfolio from SG Cowen; (b) SG Paris from making payments under the Portfolio Puts and Index Options and/or exercising the Portfolio Calls upon the termination of any SG Trust; (c) SG Paris from purchasing the Portfolio Calls, and (d) SG Paris from writing the Portfolio Puts and Index Options deposited with any SG Trust. Applicants request an exemption under sections 6(c) and 17(b) to permit each of these proposed transactions.

3. Applicants assert that given the static nature of the Portfolio, any overreaching by SG Paris would reduce the returns that an SG Trust is able to offer shareholders and would make the SG Trusts a relatively less attractive alternative to competing products. Applicants note that they are only seeking relief with respect to the initial purchase of and deposit of the underlying securities (and the sale of

the Portfolio Calls and deposit of the obligations under the Portfolio Calls) and the exercise of the Derivatives upon the termination of the SG Trust, and not with respect to an ongoing course of business. Consequently, the terms of the components of the Portfolio and of their purchase will be fully disclosed to potential investors prior to their making an investment decision. Applicants also state that since there are relatively few equity derivatives dealers that can write instruments such as the Derivatives and since SG Paris is one of the largest participants in that market, the requested relief will help promote competition and allow the SG Trusts to obtain more favorable terms on the various Derivatives.

4. Applicants also assert that SG Cowen will purchase Portfolio Puts and Index Options from SG Paris and sell Portfolio Calls to SG Paris only if the value offered by SG Paris on the relevant Derivative is more favorable than the value offered by Unaffiliated Bidders. Applicants state that the proposed bidding procedures for Derivatives will be designed to ensure that the bidding or offering process with respect to a Derivative is conducted in a neutral manner. Applicants state that the Group's roles as sponsor, principal underwriter, and bidder/offeree for the Derivatives will not give it an advantage in structuring the Derivatives or assessing their value. Applicants state that the participants in the over-the-counter options markets are various sophisticated, established, well-capitalized financial institutions including major investment banking firms, money center banks, insurance companies, and their affiliates, all of which employ similar valuation models and technology to price options. Furthermore, applicants state that prospective bidders will have a copy of an SG Trust's prospectus and a draft of the relevant Derivative a reasonable amount of time prior to the day the final bids are due. Applicants assert that the Portfolio Puts and Portfolio Calls are typical over-the-counter options, and although the Index Options will not be typical over-the-counter options, they will not be of such a customized nature as to make it unlikely for other broker-dealers or financial institutions to submit offers. The form of each Derivative will be similar to other types of Derivatives used in privately negotiated transactions, and since all of the Derivatives' terms will have been set, other than price, applicants assert that the bidding/offering procedure has been made as simple as possible. Accordingly, applicants state that the