

Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in an Unaffiliated Underlying Fund in excess of the limit in Section 12(d)(1)(A)(i), the Series and Unaffiliated Underlying Fund will execute an agreement stating that the board of directors of the Unaffiliated Underlying Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules")) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. In addition, the trustee to a Series ("Trustee") will waive or offset fees otherwise payable by the Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b-1 under the Act ("12b-1 Fees")) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Series' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not

limited to, its expense structure and the additional expenses of investing in 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 (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) 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 (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and Affiliated Funds might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become affiliated persons if the Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Series.

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 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 the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the

proposed arrangement will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

#### **Applicants' Conditions**

Applicants agree that the requested order will be subject to the following conditions:

1. (a) The Depositor, (b) any person controlling, controlled by, or under common control with the Depositor, 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 sponsored or advised by the Depositor or any person controlling, controlled by, or under common control with the Depositor (collectively, the "Group") will not control (individually or in the aggregate) an Unaffiliated 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 an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Series and its Depositor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Series Affiliate") will not cause any existing or potential investment by the Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Series or a Series Affiliate and the Unaffiliated 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.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Series or a Series Affiliate 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 Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and