

acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. 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 such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii) because the proposed limit would cap the aggregate sales charges that may be imposed by a fund of funds. Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to shares of closed-end Funds or Exchange Traded Funds held by a Trust Series, no front-end sales load, contingent deferred sales charges, rule 12b-1 fees, or other distribution fees or

redemption fees will be charged in connection with the sale or purchase of Fund shares by a Trust Series.

Applicants state that although the Trust Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds or Exchange Traded Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

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

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the 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. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that shares of Affiliated Funds will be sold to the Trust Series at net asset value, or, in the case of closed-end Affiliated Funds, at market prices. As a result, applicants believe that the proposed terms and conditions of the Trust Series' transactions in Affiliated Fund shares, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person concerned. Furthermore, applicants state that the proposed transactions will be consistent with the policies of the Trust Series as recited in their registration statements.

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

1. Section 14(a) of the Act requires in substance that a registered investment company have \$100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than \$100,000 of Fund shares in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because Fund shares are not eligible trust securities. Consequently, applicants seek an exemption under section 6(c) from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a-3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

#### *D. Section 19(b) of the Act*

Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, excepts a UIT investing in "eligible trust securities" (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Trust Series do not limit