

Section 24(d) of the Act

13. Section 24(d) provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to transactions in a redeemable security issued by an open-end investment company. Applicants request an exemption under section 6(c) of the Act from section 24(d) to permit dealers selling VIPER Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.¹⁷

14. Applicants state that VIPER Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that VIPER Shares, as a listed security, merit similar treatment, reducing compliance costs and regulatory burdens that result from the imposition of a prospectus delivery requirement on secondary market transactions. Applicants state that because VIPER Shares will be exchange-listed, prospective investors will have access to several types of market information about the VIPER Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also will be published daily in the financial section of newspapers.

15. Applicants further state that investors that purchase VIPER Shares in the secondary market will receive a Product Description, describing the Fund and its VIPER Shares. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain information about VIPER Shares that is tailored to meet the needs of investors purchasing VIPER Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

16. Sections 17(a)(1) and (2) generally prohibit an affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any

security to, or purchasing any security from, the company. Sections 2(a)(3)(A) and (C) of the Act define "affiliated person," respectively, as any person who owns 5% or more of an issuer's outstanding voting securities and any person who controls the fund. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that a large institutional investor or the Specialist could own 5% or more, or more than 25%, of a Fund's outstanding voting securities and, as a result, be deemed to be an affiliated person of the Fund under section 2(a)(3)(A) or (C). Applicants further state that, because purchases and redemptions of Creation Units would be in-kind, rather than for cash, those investors would be precluded by sections 17(a)(1) and (2) from purchasing or redeeming Creation Units from the Fund. Accordingly, applicants request an exemption under sections 6(c) and 17(b) of the Act to permit these affiliated persons, and affiliated persons of such affiliated persons who are not otherwise affiliated with the Fund, to purchase and redeem Creation Units through in-kind transactions.

17. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, 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 general purposes of the Act. Applicants contend that no useful purpose would be served by prohibiting persons affiliated with a Fund, as described above, from purchasing or redeeming Creation Units from the Fund. Applicants represent that Fund affiliates making in-kind purchases and redemptions would be treated no differently from non-affiliates making the same types of transactions. Applicants state that all purchases and redemptions of Creation Units would be at the Fund's next calculated NAV. Applicants also state that, in all cases, Deposit Securities and Redemption Securities will be valued in the same manner and using the same standards as those securities are valued for purposes of calculating the Fund's NAV. Applicants assert that, for these reasons, the requested relief meets the standards of sections 6(c) and 17(b).

Applicants' Conditions

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

1. No Future Fund will issue a class of VIPER Shares unless (a) applicants have requested and received with respect to such Future Fund either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Fund's VIPER Shares will be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. The VIPER Prospectus and the Product Description for each Fund will clearly disclose that, for purposes of the Act, VIPER Shares are issued by the Fund and the acquisition of VIPER Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Fund operates in reliance on the requested order, the VIPER Shares will be listed on an Exchange.

4. The VIPER Shares of a Fund will not be advertised or marketed as shares of an open-end investment company or mutual fund. The VIPER Prospectus of each Fund will prominently disclose that VIPER Shares are not individually redeemable and will disclose that holders of VIPER Shares may acquire the shares from the Fund and tender the shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that VIPER Shares are not individually redeemable and that holders of VIPER Shares may acquire the shares from the Fund and tender the shares for redemption to the Fund in Creation Units only.

5. Before a Fund may rely on the order, the Commission will have approved pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in VIPER Shares to deliver a Product Description to purchasers of VIPER Shares.

6. On an annual basis the Board of each Fund, including a majority of Disinterested Trustees, must determine, for each Fund, that the allocation of distribution expenses among the classes of Conventional Shares and VIPER Shares in accordance with the Multi-Class Distribution Formula is in the best interests of each class and of the Fund as a whole. Each Fund will preserve for a period of not less than six years from

¹⁷ Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter and transactions pursuant to the Conversion Privilege.