

the Board of each Fund concerning any transactions by the Fund under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of the Fund, to ensure that both borrowing and lending Funds participate on an equitable basis.

12. AIA, through the Credit Facility Team, would administer the credit facility as a disinterested fiduciary in the best interests of the Funds' shareholders. Neither AIA nor Allfirst Trust would receive any additional fee in connection with the administration of the proposed credit facility. AIA and Allfirst Trust, however, may collect standard pricing and recordkeeping, bookkeeping, and accounting fees associated with repurchase and lending transactions generally, including transactions effected through the credit facility. Fees paid to AIA or Allfirst Trust in connection with an Interfund Loan would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or SAI; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(f) of the Act granting relief from sections 12(d)(1)(A) and (B) of the Act; (c) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and, (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

#### **Applicants' Legal Analysis**

1. Section 17(a)(3) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3) of

the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having AIA as their common investment adviser, and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an 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 authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment companies involved, as recited in their registration statements, and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) AIA, through the Credit Facility Team, would administer the program as a disinterested fiduciary in the best interests of the Funds' shareholders; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) a lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) a borrowing Fund would pay interest at a rate lower than otherwise available to it under bank loan agreements and avoid the up-front commitment fees associated with

committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company, except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(f) 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 exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(f) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither AIA nor Allfirst Trust would receive any additional compensation for services provided in connection with administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security, except that a company is permitted to borrow from any bank, if immediately after the borrowing there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited