

12(d)(1)(A), (B) and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Trust Series or its affiliates over Funds. To limit the control that a Trust Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Sponsor, the Trust Series, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To further limit the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Trust 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 implication of an investment by a Trust Series under the requested order, prior to a Trust Series investment in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Trust 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 Underlying Fund may choose to reject an investment from the Trust Series.

7. Applicants do not believe that the proposed arrangement will result in 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 Trust 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 Trust Series ("Trustee") will waive or offset fees otherwise payable by the Trust 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 ("12b1-Fees")) received by the Sponsor or Trustee, or an affiliated person of the Sponsor or Trustee, from an Unaffiliated Fund in connection with the investment by a Trust Series in the Unaffiliated Fund.

8. Applicants believe 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) of the Act. Applicants also represent that a Trust 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 Trust Series and Affiliated Funds might be deemed to be under the common control of the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor. Applicants also state that a Trust Series and a Fund might become affiliated persons if the Trust 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 Trust 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 6(c) and 17(b) 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 Trust Series and Fund, and with the general purposes of the Act.

Applicants' Conditions

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

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