



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30222; 812-13820]

PowerShares Exchange-Traded Fund Trust, et al.; Notice of Application

September 26, 2012

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the “Act”) for exemptions from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies that operate as “funds of funds” to acquire shares of certain registered open-end and closed-end management investment companies and unit investment trusts that are within and outside the same group of investment companies as the acquiring investment companies.

Applicants: PowerShares Exchange-Traded Fund Trust, PowerShares Exchange-Traded Fund Trust II, PowerShares Actively Managed Exchange-Traded Fund Trust (each, a “Trust”) and Invesco PowerShares Capital Management LLC (the “Adviser”).

Filing Dates: The application was filed on September 3, 2010, and amended on December 22, 2010, October 13, 2011, April 23, 2012, September 5, 2012, and September 20, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2012, and

should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, 301 West Roosevelt Road, Wheaton, Illinois 60187.

For Further Information Contact: Jill Ehrlich, Senior Counsel, at (202) 551-6819, or David P. Bartels, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. Each Trust is organized as a Massachusetts business trust or Delaware statutory trust and is registered as an open-end management investment company under the Act.¹ Each series of a Trust will pursue distinct investment objectives and strategies. The Adviser is a Delaware limited liability company registered under the Investment Advisers Act of 1940. The

¹ Applicants request that the order extend to any future series of a Trust, and any other existing or future registered open-end management investment companies and any series thereof that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust and are, or may in the future be, advised by the Adviser or any other investment adviser controlling, controlled by, or under common control with the Adviser (together with the existing series of the Trust, the "Funds"). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions set forth in the application.

Adviser or an entity controlling, controlled by or under common control with the Adviser serves as the investment adviser for each of the Funds.²

2. Applicants request relief to the extent necessary to permit: (a) a Fund (each, a “Fund of Funds,” and collectively, the “Funds of Funds”) to acquire shares of registered management investment companies, including open-end investment companies and closed-end investment companies (“Unaffiliated OEFs” and “Unaffiliated CEFs,” respectively, and, together, the “Unaffiliated Investment Companies”), and unit investment trusts (“UITs”) (the “Unaffiliated Trusts,” and together with the Unaffiliated Investment Companies, the “Unaffiliated Funds”), in each case, that are not part of the same “group of investment companies” as the Funds of Funds;³ (b) the Unaffiliated Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (“Broker”) to sell shares of such Unaffiliated Funds to the Funds of Funds; (c) the Funds of Funds to acquire shares of other registered investment companies, including open-end investment companies, closed-end investment companies and UITs in the same group of investment companies (the “Affiliated Funds,” together with the Unaffiliated Funds, the “Underlying Funds”);⁴ and (d) the Affiliated Funds, their principal underwriters and any Broker to sell shares of such Affiliated Funds to the Funds of Funds. Applicants also request an order under sections 6(c) and 17(b) of the Act to

² All references to the term “Adviser” include any entity that results from reorganization into another jurisdiction or a change in the type of business organization.

³ For purposes of the application, the same “group of investment companies” means any two or more registered investment companies, including closed-end investment companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

⁴ Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices (“ETFs”). Underlying Funds that are registered closed-end management investment companies are referred to herein as “Underlying CEFs,” and Underlying Funds that are ETFs are “Underlying ETFs.” Underlying Funds that are registered open-end management investment companies and not ETFs are “Underlying OEFs.”

exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

Applicants' Legal Analysis:

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company from acquiring any security issued by a registered closed-end investment company if such acquisition would result in the acquiring company, any other investment companies having the same investment adviser, and companies controlled by such investment companies, collectively, owning more than 10% of the outstanding voting stock of the registered closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A), (B) and (C) to the extent necessary to permit: (i) the Funds

of Funds to acquire shares of Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) and (C) of the Act; and (ii) the Underlying Funds, their principal underwriters and any Broker to sell shares of the Underlying Funds to the Funds of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 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.

4. Applicants submit that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. Applicants assert that the concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds because they are part of the same group of investment companies. To limit the control a Fund of Funds or Fund of Funds Affiliate⁵ may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser and any person controlling, controlled by or under common control with the Adviser, and 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 advised or sponsored by the Adviser or any person controlling, controlled by or under common control with the Adviser (collectively, the "Group") from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B)

⁵ A "Fund of Funds Affiliate" is the Adviser, any Sub-Adviser, promoter or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by or under common control with any of those entities. An "Unaffiliated Fund Affiliate" is an investment adviser, sponsor, promoter or principal underwriter of an Unaffiliated Fund or any person controlling, controlled by, or under common control with any of those entities.

of the Act to a Fund of Funds (“Sub-Adviser”) and any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the “Sub-Adviser Group”).

5. With respect to Underlying CEFs, applicants submit that one significant difference from Underlying OEFs is that, whereas Underlying OEFs may be unduly influenced by the threat of large-scale redemptions, Underlying CEFs cannot be so influenced because they do not issue redeemable securities and, therefore, are not subject to large-scale redemptions. On the other hand, applicants state that Unaffiliated CEFs may be unduly influenced by a holder’s ability to vote a large block of stock. To address this concern, applicants submit that, with respect to a Fund of Fund’s investment in an Unaffiliated CEF, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Unaffiliated CEF in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated CEF in the same proportion as the vote of all other holders of the same type of such Unaffiliated CEF’s shares. Applicants state that, in this way, an Unaffiliated CEF will be protected from undue influence by a Fund of Funds through the voting of the Unaffiliated CEF’s shares.

6. Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Underlying Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to

purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”).⁶

7. To further ensure that an Unaffiliated Investment Company understands the implications of a Fund of Funds’ investment under the requested relief, prior to its investment in the shares of an Unaffiliated Investment Company in excess of the limit of section 12(d)(1)(A)(i) of the Act, a Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their boards of directors or trustees (each, a “Board”) and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (the “Participation Agreement”). Applicants note that an Unaffiliated Fund (including an Unaffiliated ETF or an Unaffiliated CEF) would also retain its right to reject any initial investment by a Fund of Funds in excess of the limits in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds. In addition, an Unaffiliated Fund (other than an Unaffiliated ETF or an Unaffiliated CEF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds. Finally, subject solely to the giving of notice to a Fund of Funds and the passage of a reasonable notice period, an Unaffiliated Fund (including an Unaffiliated CEF) could terminate a Participation Agreement with the Fund of Funds.

8. Applicants state that they do not believe that the proposed arrangement will result in excessive layering of fees. The Board of each Fund of Funds, including a majority of the

⁶ An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, trustee, advisory board member, investment adviser, sub-adviser or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, sub-adviser, member of an advisory board or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

trustees who are not “interested persons” within the meaning of section 2(a)(19) of the Act (the “Independent Trustees”), will find that the management or advisory fees charged under a Fund of Funds’ advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund’s advisory contract. In addition, the Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or an affiliated person of the Adviser by the Unaffiliated Investment Company in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants further state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in Rule 2830 of the Conduct Rules of the NASD.⁷

10. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 12 below.

⁷ Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

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 Fund of Funds and an Affiliated Fund may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that a Fund of Funds and an Underlying Fund may also be deemed to be affiliated persons of one another if a Fund of Funds owned 5% or more of one or more of such Underlying Funds’ outstanding voting securities. Applicants state that, for example, the sale by an Underlying OEF to the Fund of Funds and the redemption by the Underlying OEF of the Fund of Funds may be deemed to violate section 17(a).⁸ Similarly, applicants state that, the participation by the Fund of Funds in a follow-on offering of an Underlying CEF may be deemed to violate section 17(a).⁹

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 (i) the terms of the proposed

⁸ Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

⁹ Applicants assert that they would not require relief from section 17(a) for secondary market transactions in the shares of any Underlying ETF or Underlying CEF, regardless of whether the Fund of Funds and Underlying Fund may be deemed to be affiliated persons.

transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company concerned; and (iii) 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 transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be in accordance with the rules and regulations under the Act.¹⁰ Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund and with the general purposes of the Act.

Applicants' Conditions:

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

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Sub-

¹⁰ Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying ETF or an Underlying CEF through secondary market transactions rather than through principal transactions with such Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each Fund of Funds that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of an Underlying ETF or Underlying CEF to purchase and redeem shares from such Underlying ETF and to purchase shares from such Underlying CEF. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Underlying ETF or Underlying CEF could be deemed to be an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the Underlying Fund is also an investment adviser to the Fund of Funds.

Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. With respect to a Fund's investment in an Unaffiliated CEF, (i) each member of the Group or Sub-Adviser Group that is an investment company or an issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act will vote its shares of the Unaffiliated CEF in the manner prescribed by section 12(d)(1)(E) of the Act and (ii) each other member of the Group or Sub-Adviser Group will vote its shares of the Unaffiliated CEF in the same proportion as the vote of all other holders of the same type of Unaffiliated CEF's shares. If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated Fund, the Group or a Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of such Unaffiliated Fund, then the Group or the Sub-Adviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to ensure that its Adviser and any Sub-Adviser to the Fund of Funds are conducting the investment program of the Fund of Funds without

taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds 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 Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds

the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Investment Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth (1) the party from whom the securities were acquired, (2) the identity of the

underwriting syndicate's members, (3) the terms of the purchase, and (4) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Investment Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Adviser, or an affiliated person of the Adviser, other than any advisory fees paid to the Adviser or its affiliated person by the Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub- Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Investment Company in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company, or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities

of one or more investment companies, for short-term cash management purposes or (ii) engage in inter-fund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill
Deputy Secretary

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