

company participates, unless the Commission has approved the joint arrangement. Applicants state that the Participating Clients, by purchasing and redeeming shares of the Money Market Funds, the Money Market Funds, by selling shares to and redeeming shares from Participating Clients, and the Advisers, by managing the assets of the Participating Clients invested in the Money Market Funds, could be deemed to be participating in a joint enterprise or joint arrangement within the meaning of section 17(d) and rule 17d-1.

8. In considering whether to approve a joint transaction under rule 17d-1, the Commission considers whether the registered investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d-1.

9. Applicants state that the investment by the Participating Funds in shares of Money Market Funds will be on the same basis and will be indistinguishable from any other shareholder account maintained by the Money Market Funds. Applicants also maintain that, to the extent that the Money Market Funds participate on a basis that is different from the other participants, the relative advantages and disadvantages will vary randomly over time and are not expected to be material.

Applicants' Conditions

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

1. Investment of Cash Balances in shares of a Money Market Fund will be in accordance with each Participating Fund's investment restrictions, if any, and will be consistent with its objectives and policies as set forth in such Participating Fund's registration statement.

2. The shares of the Money Market Funds sold to and redeemed by the Participating Funds will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b-1 under the Act, or service fees (as defined in rule 2830(b)(9) of the NASD's Conduct Rules), or, if such shares are subject to any such fee, the Adviser for each Participating Fund will waive its advisory fee for each Participating Fund in an amount that offsets the amount of such fees that are incurred by the Participating Fund.

3. Prior to reliance on the order by a Participating Fund, the Board of the Participating Fund will hold a meeting for the purpose of voting on an advisory contract under section 15 of the Act. Before approving any advisory contract for a Participating Fund, the Board, including a majority of the Independent Board Members, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Participating Fund by the Adviser should be reduced to account for reduced services provided to the Participating Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, the Adviser to the Participating Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory fee attributable to, managing the Uninvested Cash of the Participating Fund that can be expected to be invested in the Money Market Funds. The minute books of the Participating Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

4. Each Participating Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Participating Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25% of the Participating Fund's total assets.

5. Each Participating Fund and each Money Market Fund that relies on the order will be part of the same group of investment companies as defined in section 12(d)(1)(G) of the Act, and will be advised, or provided the Adviser manages the Cash Balances, sub-advised by an Adviser. Each Unregistered Fund and Other Institutional Client that relies on the order will have an Adviser as its investment adviser, trustee, managing member or general partner exercising investment discretion.

6. No Money Market Fund in which a Participating Fund invests shall acquire securities of any 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 securities of a registered open-end investment company in the same group of investment companies as the Money Market Fund to the extent permitted by section 12(d)(1)(E) of the Act.

7. Before a Participating Fund that participates in the Securities Lending Program is permitted to invest Cash

Collateral in the Money Market Funds, a majority of the Board (including a majority of the Independent Board Members) will approve such investment. No less frequently than annually, the Board of each Participating Fund (including a majority of the Independent Board Members) will evaluate the Securities Lending Program and its results and determine that investing Cash Collateral in the Money Market Funds is in the best interests of the Participating Fund.

8. The Board of any Participating Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-4463 Filed 8-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27028; 812-13142]

MetLife Investors USA Insurance Company, et al.; Notice of Application

August 11, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) 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: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts ("UITs") that are within and outside the same group of investment companies.

Applicants: (a) MetLife Investors USA Insurance Company (including any insurance company controlling, controlled by or under common control with MetLife Investors USA Insurance Company, including, without limitation, Metropolitan Life Insurance Company) ("MLI USA"); (b) Met Investors Series Trust ("MIST") and Metropolitan Series Fund, Inc. ("Met Series Fund," and together with MIST, the "Investment Companies"), including the currently

existing series and all future series thereof; (c) any 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 Investment Companies, and are, or will be, advised by Met Investors Advisory LLC ("Met Investors") or MetLife Advisers, LLC ("MetLife Advisers," and together with Met Investors, the "Managers")¹ or any entity controlling, controlled by or under common control with Met Investors or MetLife Advisers; (d) Met Investors; and (e) MetLife Advisers.²

Filing Dates: The application was filed on December 8, 2004, and amended on August 5, 2005.

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 September 6, 2005, 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: Secretary, Commission, 100 F Street, NE., Washington, DC 20549-9303. Applicants: MLI USA, MIST, and Met Investors, 22 Corporate Plaza Drive, Newport Beach, CA 92660; Met Series Fund and MetLife Advisers, 501 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations

1. MLI USA is a stock life insurance company organized under the laws of the state of Delaware and an indirect wholly-owned subsidiary of MetLife, Inc., a publicly traded company. MLI USA issues group and individual variable annuity contracts and variable life insurance policies (collectively, the "Contracts"), which offer opportunities to invest in the Investment Companies through separate accounts registered under the Act ("Registered Separate Accounts") and separate accounts exempt from registration under the Act ("Unregistered Separate Accounts," and together with the Registered Separate Accounts, the "Separate Accounts").

2. MIST is organized as a Delaware statutory trust and Met Series Fund is organized as a Maryland corporation. Each of MIST and Met Series Fund is registered under the Act as an open-end management investment company.³ MIST and Met Series Fund currently offer 30 and 33 Funds, respectively. Except for organizational seed capital for certain of the Funds invested by Met Investors or an affiliate, shares of MIST and Met Series Fund are sold exclusively to the Separate Accounts to fund benefits under the Contracts issued by MLI USA and its affiliates.

3. Each Manager is an affiliated person of MLI USA and is registered under the Investment Advisers Act of 1940. Met Investors serves as investment adviser to MIST and each of its current Funds. MetLife Advisers serves as investment adviser to Met Series Fund and each of its current Funds.

4. Applicants request relief to permit certain Funds (each such Fund, a "Fund of Funds") to invest in: (a) other Funds ("Affiliated Funds"), and/or (b) registered open-end management investment companies and UITs that are not part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) as the Investment Companies ("Unaffiliated Funds," and together with the Affiliated Funds, the "Underlying Funds"). The Unaffiliated Funds may include UITs ("Unaffiliated Underlying Trusts") and open-end management investment companies registered under the Act ("Unaffiliated Underlying Funds"). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds

may be "exchange-traded funds" that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices ("ETFs"). Each Fund of Funds may also make investments in government securities, domestic and foreign common and preferred stock, fixed income securities, futures transactions, options on the foregoing and in other securities that are not issued by registered investment companies and which are consistent with its investment objective, including money market instruments (the "Other Securities").

5. Applicants state that the requested relief will provide an efficient and simple method of allowing investors to create a comprehensive asset allocation program.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act 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 or dealer from selling the shares of the investment company 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.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that, while the Funds of Funds currently rely on section 12(d)(1)(G) with respect to their investments in Affiliated Funds, if the Funds of Funds wish to invest in Unaffiliated Funds and Other Securities in addition to Affiliated Funds, they cannot then rely on section 12(d)(1)(G).

3. Section 12(d)(1)(J) of the Act provides that the Commission may

¹ The Managers are each referred to in this notice as a "Manager" and include any existing or future entity controlling, controlled by or under common control with a Manager.

² 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 of the application.

³ The Investment Companies and any existing or future registered open-end management investment company that is part of the same group of investment companies as the Investment Companies are each referred to in this notice as an "Investment Company," and each series thereof is referred to in this notice as a "Fund," and all series thereof are, collectively, referred to as "Funds."

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 seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Affiliated and Unaffiliated Funds and to permit the Affiliated and Unaffiliated Funds, their principal underwriters and any broker or dealer to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), 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 Fund of Funds or its affiliated persons over the Unaffiliated Funds. To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting: (a) Each Manager and any person controlling, controlled by or under common control with the Manager, 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 Manager or any person controlling, controlled by or under common control with the Manager (collectively, the "Group"), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act ("Sub-Adviser") to a Fund of Funds, 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 by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the "Sub-Adviser Group") from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

6. Applicants also propose conditions 2–7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length

basis. Condition 2 precludes a Fund of Funds and its Manager, Sub-Adviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a "Fund of Funds Affiliate") from causing 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 its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an "Unaffiliated Fund Affiliate"). Condition 5 precludes a Fund of Funds and Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) from causing 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 officer, director, member of an advisory board, Manager, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Manager, Sub-Adviser, or employee is an affiliated person (each, an "Underwriting Affiliate," except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

7. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and Unaffiliated Underlying Fund execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right

to reject an investment by a Fund of Funds.⁴

8. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees of each Fund of Funds ("Board"), including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will find that the investment advisory fees charged under a Fund of Funds' investment advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Affiliated Fund's and Unaffiliated Underlying Fund's advisory contract(s). Applicants further state that each Manager 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 Underlying Fund under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

9. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any 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), 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 affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. Applicants

⁴ An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the agreement with the Fund of Funds.

also represent that a Fund of Funds' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying 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 the Funds of Funds and the Affiliated Funds might be deemed to be under common control of the Manager and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

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 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.⁵ Applicants state that the proposed arrangement 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 the Sub-Adviser 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 or the Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, it (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) 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. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) Vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the

⁵ Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions.

shares for which instructions were received. This condition will not apply to the 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 section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Underlying Fund) or as the sponsor (in the case of an Unaffiliated Underlying 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 Disinterested Trustees, will adopt procedures reasonably designed to assure that the Manager and any Sub-Adviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a 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 Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Underlying Fund 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 Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund 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 Underlying Fund 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 Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an

Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Underlying Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Underlying Fund 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 Underlying Fund 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 Underlying Fund. The Board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (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 Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Underlying Fund 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 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 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 Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were

acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Unaffiliated Underlying Fund were made.

8. Prior to its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that their boards of directors or trustees 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 Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Underlying Fund of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than 6 years thereafter, the first 2 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 Disinterested 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. Each Manager 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 Underlying Fund under rule 12b-1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Unaffiliated Fund, 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 from an Unaffiliated Fund by the Sub-Adviser, or an affiliated person of the Sub-Adviser, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Fund, 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. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, 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.

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 affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

13. The Board of any Fund of Funds and any Unaffiliated Underlying Fund will satisfy the fund governance standards as defined in rule 0-1(a)(7) under the Act by the compliance date for the rule.

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

Margaret H. McFarland,
Deputy Secretary.

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