

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

In the matter of:	X	File No. 812 - 14153
IndexIQ ETF Trust;	:	
IndexIQ Active ETF Trust; IndexIQ Advisors LLC; and		
ALPS Distributors, Inc.	X	

[Amendment No. 1 to the](#) Application for an Order-~~(i)~~ under Section 12(d)(1)(J) of the Investment Company Act of 1940, as amended ("Act"), for exemptions from Sections 12(d)(1)(A), 12(d)(1)(B) and 12(d)(1)(C) of the Act, under Sections 6(c) and 17(b) of the Act exempting certain transactions from Section 17(a) of the Act and under Section 6(c) of the Act for an exemption from Rule 12d1-2(a) under the Act.

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Page 1 of ~~56~~ 57 sequentially numbered pages (including exhibits).
As filed with the U.S. Securities and Exchange Commission on ~~May 10~~, [September 17](#), 2013

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I. INTRODUCTION

A. Summary of Application

IndexIQ ETF Trust (“**Index Trust**”), Index IQ Active ETF Trust (“**Active Trust**”) (each, a “**Trust**” and collectively, “**Trusts**”), IndexIQ Advisors LLC (“**IndexIQ Advisors**”)¹ and ALPS Distributors Inc. (“**Distributors**”) (collectively, “**Applicants**”) hereby apply for and request from the U.S. Securities and Exchange Commission (“**Commission**”) an order as described below (“**Order**”). Applicants ask that the requested order apply not only to any existing series of the Index Trust and the Active Trust but that the order also extend to any future series of the Trusts 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”², as defined in Section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by IndexIQ Advisors or any other investment adviser controlling, controlled by, or under common control with IndexIQ Advisors (together with the existing series of the Trusts, each series a “**Fund**,” and collectively, “**Funds**”).

Applicants request that the Commission issue an order under Section 12(d)(1)(J) of the Act exempting them from the limitations set forth in Sections 12(d)(1)(A), 12(d)(1)(B), and 12(d)(1)(C) of the Act (“**Funds of Funds Relief**”) to the extent necessary to permit:

- (1) each Fund of Funds (as defined below, collectively “**Funds of Funds**”) to acquire shares of registered open-end management investment companies (each, an “**Unaffiliated FOF Portfolio Open-End Investment Company**”), registered closed-end management

¹ All references herein to the term “IndexIQ Advisors” include any ~~successor~~successors in interest to IndexIQ Advisors LLC, ~~and any reference.~~ Any references herein to the term “Sub-Advisor” (defined below) include any ~~successor~~successors in interest to such Sub-Advisor. For purposes of the requested order, a “successor” is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Financial Development HoldCo LLC is the parent company of IndexIQ Advisors.

² ~~For purposes of this Application, the term “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.~~

investment companies, ~~including~~and “business development companies”, as defined by Section 2(a)(48) of the ~~1940~~Act (each, a “BDC”)³² (each registered closed-end management investment company and each BDC, an “Unaffiliated FOF Portfolio Closed-End Investment Company” and, together with the Unaffiliated FOF Portfolio Open-End Investment Companies, “Unaffiliated FOF Portfolio Investment Companies”), exchange-traded funds registered under the Act (collectively, “Unaffiliated FOF Portfolio ETFs”) and registered unit investment trusts (“UITs”) (collectively, “Unaffiliated FOF Portfolio UITs” and together with the Unaffiliated Investment Companies and the Unaffiliated FOF Portfolio ETFs, “Unaffiliated FOF Portfolio Funds”), in each case, that are not in the same “group of investment companies” (for purposes of this Application, the term “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) as the Funds of Funds;

(2) Unaffiliated FOF Portfolio Funds, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934, as amended (“1934 Act”) (“Broker”) to sell shares of such Unaffiliated FOF Portfolio Funds to the Funds of Funds;

³² While BDCs are not required to register under the ~~1940~~ Act, they are subject to the provisions of Sections 55 through 65 thereof. Applicants do not believe that investments in BDCs present any particular considerations or concerns that may be different from those presented by investments in registered closed-end investment companies. Shares of BDCs, like shares of registered closed-end investment companies, are traded on a national securities exchange, thereby providing investors with the same degree of liquidity as other publicly traded investments. In addition, BDCs are registered under the 1934 Act and their shares are registered under the Securities Act of 1933 (“1933 Act”), and are subject to all registration and reporting requirements under those two statutes. Accordingly, the Applicants do not believe, for purposes of the relief requested herein, there are any fundamentally different issues between investments in BDCs and investments in registered closed-end investment companies.

(3) Funds of Funds to acquire shares of ~~other~~-registered open-end management investment companies, including open-end management investment companies and series thereof, (each an “Affiliated FOF Portfolio Open-End Investment Company,” as well as”), registered closed-end management investment companies, and BDCs, ~~together, (each an “Affiliated FOF Portfolio Closed-End Investment Companies,” and UITs Company”~~, and, together with the Affiliated FOF Portfolio Open-End Investment Companies, “Affiliated FOF Portfolio Investment Companies”, exchange traded funds registered under the Act (each, an “Affiliated FOF Portfolio ETF” and registered UITs, collectively, “Affiliated FOF Portfolio UITs³” (if any), in the same group of investment companies as the Funds of Funds (collectively, “Affiliated FOF Portfolio Funds”)⁴; and

(4) Affiliated FOF Portfolio Funds, their principal underwriters and any Broker to sell shares of the Affiliated FOF Portfolio Funds to the Funds of Funds.

Applicants note that the Funds of Funds Relief requested in this Application differs from many existing precedents granting exemptive relief from the limitations of Section 12(d)(1) of the ~~1940~~ Act to management investment companies only in that the Applicants request an order that would allow the Funds of Funds to invest in closed-end investment companies and BDCs in addition to open-end investment companies and UITs. ~~However, as discussed more fully below, Applicants’ requested relief is consistent with the protection of investors as well as with Section 12(d)(1)-~~

³ Unaffiliated FOF Portfolio UITs and Affiliated FOF Portfolio UITs are collectively referred to herein as “FOF Portfolio UITs”.

⁴ A Fund of Funds may invest in Unaffiliated FOF Portfolio Funds and/or Affiliated FOF Portfolio Funds. In addition, certain of the Funds may in the future pursue their investment objectives through a master-feeder arrangement in reliance on Section 12(d)(1)(E) of the ~~1940~~ Act. Each Fund of Funds may invest in a FOF Portfolio Fund that operates as a feeder fund in a master-feeder arrangement. In accordance with Condition 12 herein, a Fund of Funds may not invest in an FOF Portfolio Fund that operates as a feeder fund unless the feeder fund is part of the same group of investment companies, as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated FOF Portfolio Fund that operates as a feeder fund and the corresponding master fund is not within the same group of investment companies, as the Fund of Funds and Affiliated FOF Portfolio Fund, the master fund would be an Unaffiliated FOF Portfolio Fund for purposes of this Application and its conditions.

~~exemptive relief previously granted to certain UITs, and recently granted to certain exchange-traded funds (“ETFs”), permitting them to invest in closed-end funds and BDCs.⁵~~

Applicants also request that the Commission issue an order under Sections 6(c) and 17(b) of the Act exempting the transactions described in clauses (1) through (4) above from Section 17(a) of the Act (“**Section 17(a) Relief**”) to the extent necessary to permit such purchases and redemptions by the Funds of Funds of shares of the Unaffiliated FOF Portfolio Funds and Affiliated FOF Portfolio Funds (collectively, “**FOF Portfolio Funds**”) to permit sales and redemptions by the FOF Portfolio Funds of their shares in transactions with the Funds of Funds, as and to the extent described in this Application. Certain of the FOF Portfolio Funds registered under the Act as either UITs or open-end management investment companies may have requested and obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as ETFs.

Applicants further request that the Commission issue an order under Section 6(c) of the Act to permit any existing or future Fund of Funds that relies on Section 12(d)(1)(G) of the Act (“**Section 12(d)(1)(G) Fund of Funds**”) and that otherwise complies with Rule 12d1-2(a) under the Act, to also invest, to the extent consistent with its investment objective(s), policies, strategies and limitations, in other financial instruments that may not be securities within the

⁵~~Applicants note that recently the Commission has issued an order to several ETFs on applications for relief virtually identical to that requested by the Applicants relating to investments in closed-end investment companies. See, *In the Matter of Global X Funds, et al.*, Investment Company Act Release Nos. 30426 (March 14, 2013) (notice) and 30454 (April 9, 2013) (order) (together, “**Global X Order**”); *First Trust Exchange Traded Fund et al.*, Investment Company Act Release Nos. 30345 (January 8, 2013) (notice) and 30377 (February 5, 2013) (order) (together, “**First Trust Order**”); *PowerShares Exchange Traded Fund Trust, et al.*, Investment Company Act Release Nos. 30222 (September 26, 2012) (notice) and 30238 (October 23, 2012) (order) (together, “**PowerShares Order**”) and *In the Matter of Van Eck VIP Trust et al.*, Investment Company Act Release Nos. 30063 (May 12, 2012) (notice) and 30096 (June 5, 2012) (order) amending a prior order *In the Matter of Van Eck Worldwide Insurance Trust, et al.*, Investment Company Act Release Nos. 27820 (May 9, 2007) (notice) and 27849 (June 1, 2007) (order) (together, “**Van Eck Order**”) (collectively, “**ETF Funds of Funds Orders**”), as further discussed in in this Application.~~

meaning of Section 2(a)(36) of the Act (“**Other Investments**”) (“**Rule 12d1-2 Relief**”)⁶. Funds of Funds Relief, Section 17(a) Relief and [Rule 12d1-2 Relief](#) are collectively referred to herein as “**Requested Relief**”.

All existing entities that intend to rely on the order as requested in this Section I.A. of the Application (“**Order**”) have been named as Applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of this Application and the Order⁷⁵.

II. APPLICANTS

A. The Trusts

The Index Trust and the Active Trust is each organized under the laws of Delaware as a statutory trust and is registered with the Commission as an open-end management investment company under the Act with multiple series. Each Trust offers and sells its shares pursuant to a registration statement on Form N-1A filed with the Commission under the 1933 Act and the Act (“**Registration Statement**”), and any future Trust will be so registered. Each of [the](#) current ~~Trusts~~² Funds relies, and any future Funds, ~~and any future trust’s Funds~~ will rely, on the exemptive relief granted in the relevant Prior [IndexIQ Trust](#) Order to operate as an ETF. Each Fund will pursue distinct investment objectives and strategies, will hold securities and may hold other instruments as well, pursuant to the terms of the applicable Prior [IndexIQ Trust](#) Order.

⁶ ~~Applicants note that the Commission recently issued the Global X Order and the First Trust Order with respect to applications for relief from Rule 12d1-2 that are virtually identical to that requested by Applicants.~~

⁷⁵ In no case will a Fund of Funds rely on the exemption from Section 12(d)(1) granted to the Index Trust *In the Matter of IndexIQ ETF Trust, et al*, Investment Company Act Release Nos. 28638 (February 27, 2009) (notice) and 28653 (March 20, 2009) (order) (together, “**Prior Index Trust Order**”) or the exemption from Section 12(d)(1) granted to the Active Trust in Investment Company Act Release Nos. 30130 (July 9, 2012) (notice) and 30161 (August 3, 2012) (order) (“**Prior Active Trust Order**” and, together with the Prior Index Trust Order, “**Prior Trust Orders**”).

B. IndexIQ Advisors

IndexIQ Advisors is organized as a limited liability company established in Delaware with its principal office currently located at 800 Westchester Avenue, Suite N-611, Rye Brook, 10573 and is registered as an “investment adviser” under Section 203 of the Advisers Act. As stated in the Prior Orders, IndexIQ Advisors or an entity controlling, controlled by or under common control with IndexIQ Advisors serves, or will serve, as the investment adviser for each of the Trusts’ Funds including any future Funds. The Advisor, subject to the oversight and authority of the Board of Trustees of the Trust (“Board”)⁶, will develop the overall investment program for each Fund. The Advisor may enter into sub-advisory agreements with one or more additional investment advisors to act as “Sub-Advisors” with respect to particular Funds (each, a “Sub-Advisor” and collectively, the “Sub-Advisors”). Any Sub-Advisor for the Funds will be registered or not subject to registration under the Advisers Act and will serve as the portfolio manager for each such Fund. Under the Advisor's supervision, each Sub-Advisor will manage the investment and reinvestment of each Fund's assets in accordance with the Fund's investment objective. The Advisor will compensate any Sub-Advisor out of the advisory fees paid to the Advisor pursuant to the investment advisory contract.

C. The Distributor

ALPS Distributors, Inc. (“ALPS”) serves as the principal underwriter and distributor for the existing Funds. ALPS, or another entity will serve as the principal underwriter and distributor for each of the future Funds (each such other entity a “Future Distributor”). ALPS is , and each Future Distributor will be, registered as a broker-dealer under the Exchange Act (“Broker”), and a member in good standing of the Financial Industry Regulatory Authority

⁶ The term “Board”, as used in this Application, (i) also includes any board of directors or trustees of a Future Fund, if different, and (ii) refers to the board of directors or trustees, as applicable, of the specified entity.

(“**FINRA**”). The Distributor and any Future Distributor will distribute Shares on an agency basis. None of the Trust, the Funds, the Advisor or ALPS is an affiliate of an Exchange. The Distributor is not affiliated with the Advisor or any Sub-Advisor. A Future Distributor may be an affiliated person of the Advisor within the meaning of Section 2(a)(3)(C) of the ~~1940~~ Act. The Distributor will comply with the terms and conditions of this Application. The Applicants request that the order requested herein apply to any Future Distributor that complies with the terms and conditions of this Application.

III. INVESTMENT STRATEGIES OF THE FUNDS

A. Index Funds

Each Fund of the Index Trust (“**Index Fund**”) is, or will be, structured as an ETF that seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of a stated underlying index (each, an “**Underlying Index**”) and will hold certain securities selected to correspond generally to the performance of its Underlying Index.

B. Active Funds

Each Fund of the Active Trust (“**Active Fund**”) is, or will be, structured as an ETF with an “actively managed” portfolio of securities and other instruments selected to achieve such Fund’s objectives and implement its strategies, and therefore will not seek to replicate the performance of an Underlying Index.

C. Funds of Funds

Certain Index Funds and Active Funds are, or will be, structured as “**Funds of Funds**” as they invest a portion or all of their assets in the securities of investment companies to achieve their respective objectives and implement their strategies.

1. Index Fund of Funds

Currently, all Funds of Funds offered are Index Funds (“**Index Fund of Funds**”), each of which is based on a stated Underlying Index comprised of component securities, at least some of which are the shares of one or more investment companies (each, an “**Underlying FOF Index**”) that are Unaffiliated FOF Portfolio Funds. In the future, certain Index Fund of Funds may be based on an Underlying FOF Index comprised in whole or in part of the shares of Unaffiliated FOF Portfolio Funds, while other Index Funds of Funds may be based upon an Underlying FOF Index comprised in whole or in part of the shares of both Unaffiliated FOF Portfolio Funds and Affiliated FOF Portfolio Funds. Each FOF Portfolio Fund held by an Index Fund of Funds is, or will be, in turn, based upon its own stated underlying index ~~(referred to herein as a “**Base Index**”)~~ and will hold equity and/or fixed income securities issued by domestic and/or foreign issuers that are the individual components of such index ~~(collectively referred to herein as “**Base Index Components**”)~~. Each Index Fund of Funds must invest some or all of its assets in shares issued by the FOF Portfolio Funds that comprise its relevant Underlying FOF Index, thereby becoming subject to the limitations imposed by Section 12(d)(1) of the Act (discussed below).

2. Active Funds of Funds

A Fund of Funds that is an active Fund (“**Active Fund of Funds**”) will invest some or all of its assets in shares issued by FOF Portfolio Funds selected by IndexIQ Advisors to achieve such Fund’s objectives and implement its strategies without reference to any Underlying FOF Index, and will hold equity and/or fixed income securities issued by domestic and/or foreign issuers. Therefore, each Active Fund of Funds holding shares issued by Unaffiliated FOF Portfolio Funds and/or Affiliated FOF Portfolio Funds also will become subject to the same Section 12(d)(1) limitations affecting Index Fund of Funds.

3. Applicants Seek Exemption To Operate Certain Funds As Fund of Funds In Excess Of The Limits Imposed By Section 12(d)(1) of the Act.

Each Fund is structured as an ETF that either seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of an underlying index (each, an “Underlying Index”) or is “actively managed” and does not seek to replicate the performance of an Underlying Index. Certain Funds are structured as “funds of funds,” as they invest a significant portion or all of their assets in the securities of investment companies. Because certain Funds invest in the shares of the FOF Portfolio Funds, they are subject to the limitations of Section 12(d)(1) of the Act—imposes, which, as described in further detail below, limits on the ability of investment companies, such as the Funds, to invest their assets in, or sell their assets to, other investment companies. Specifically, Index Funds of Funds are subject to limitations on acquisitions, sales and redemptions of their FOF Portfolio Funds imposed by Section 12(d)(1)(A) and (B) of the Act as described in Section IV.A.1 below, and they are also subject to the provisions of Section 12(d)(1)(C) which prohibits an investment company from acquiring securities of a registered closed-end company if such acquisition would cause the acquiring company and certain of its affiliated investment companies to own more than 10% of the total

Historically, the Funds have been able to purchase FOF Portfolio Funds in compliance with Section 12(d)(1). Those Funds which invest in FOF Portfolio Funds in excess of the limitations specified in Sections 12(d)(1)(A) and 12(d)(1)(B) of the Act generally have been able to rely on Section 12(d)(1)(F) for purposes of investing in Unaffiliated FOF Portfolio Funds. As the number of Funds has grown, however, and because each Fund must aggregate its holdings with those of affiliated persons of the Fund for purposes of compliance with Section 12(d)(1)(F)(i) (which limits aggregate holdings to not more than three percent of an Underlying

Fund's outstanding ~~voting stock of such closed end company. To date, all Funds have complied with the restrictions contained in Section 12(d)(1), when acquiring shares of the Unaffiliated FOF Portfolio Funds that comprise their respective Underlying FOF Indexes, by relying upon the provisions of Section 12(d)(1)(F) of the Act.⁸ However, Applicants find that compliance with the provisions of~~stock), compliance with Section 12(d)(1)(F) of the Act is becoming more difficult, because both the number, and the size, of Funds has grown since inception and also because each Fund of Funds must aggregate its holdings of FOF Portfolio Funds shares with those of all of its Affiliated FOF Portfolio Funds, and must refrain from purchasing more than 3% of the outstanding shares of each FOF Portfolio Fund in order to comply with the provisions of Section 12(d)(1)(F)(i) of the Act has become more difficult. Applicants believe that the continued application of the combined restrictions imposed by Sections 12(d)(1)(A),(B),(C), and (F) of the Act The restrictions of Section 12(d)(1), coupled with the increasing difficulty in complying with Section 12(d)(1)(F) due to growth in the number of Funds, could adversely affect the ~~Index Funds of Funds' ability to acquire shares of their respective FOF Portfolio~~of Funds in the amount necessary to fully replicate, or sample, their respective Underlying FOF Indexes. In addition, Applicants believe that the combined restrictions of Sections 12(d)(1)(A),(B),(C), and (F) of the Act could otherwise prevent Active Funds of Funds from engaging their benchmark indices or otherwise inhibit the ability of a Fund to engage in investment strategies consistent with their respective investment objectives. Depending upon the nature of (i) the FOF Portfolio Funds that make up the constituents of the Underlying FOF Index followed by an Index Fund of Funds, or (ii) the nature of the Portfolio Funds held by an Active Fund of Funds, the inability of such an Index Fund of Funds and/or an Active Fund of Funds to acquire additional, necessary

⁸-Applicants note that the Index Funds of Funds currently offered have relied solely upon Section 12(d)(1)(F) of the Act in compliance with the restriction contained in the application for, and the relief granted in, the Prior Index Trust Order.

~~shares of such FOF Portfolio Funds or Unaffiliated FOF Portfolio Funds and/or Affiliated FOF Portfolio Funds might force it to close to new investors and/or to terminate. Applicants believe that neither result would benefit the shareholders of such Funds of Funds and the Fund's~~
objective. In view of the foregoing, Applicants are seeking exemptive relief from Section 12(d)(1) as specified herein. Applicants accordingly seek relief from the provisions of Section 12(d)(1) of the Act as set forth in Section IV below.

IV. APPLICABLE LAW AND LEGAL ANALYSIS FOR RELIEF REQUESTED IN THIS APPLICATION

A. Section 12(d)(1) Relief

1. Explanation of Section 12(d)(1)

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 another investment company except in accordance with the limits set forth in that Section. Section 12(d)(1) of the Act was enacted to prevent unregulated pyramiding of investment companies and the abuses that are perceived to arise from such pyramiding such as:

- duplicative costs;
- the exercise of undue influence or control over the underlying funds; and
- the complexity of such arrangements.⁹⁷

Specifically, Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring the securities of any other investment company if, immediately after the acquisition: (a) the acquiring company owns more than 3% of the total outstanding voting stock of the acquired company, (b) the value of the securities of the acquired company exceeds 5% of the total assets of the acquiring company, or (c) the aggregate value of those securities and the

⁹⁷ See Report of the SEC on the Public Policy Implications of Investment Company Growth, in H.R. Rep. No. 2337, at 311-24 (1966) (“**PPI Report**”).

securities of all other investment companies owned by the acquiring company exceeds 10% of its total assets.

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 or otherwise disposing of any of the shares of the investment company to another investment company if immediately after such sale or disposition: (a) more than 3% of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it, or (b) more than 10% of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

Section 12(d)(1)(C) prohibits an investment company from purchasing or otherwise acquiring any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10% of the total outstanding voting stock of such closed-end company.

2. Request for an Order of Exemption Pursuant to Section 12(d)(1)(J)

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. Therefore, 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) of the Act to the extent necessary to permit: (i) the Funds of Funds to acquire shares of ~~Unaffiliated~~ FOF Portfolio Funds in excess of the limits set forth in Section 12(d)(1)(A) and (C) of the Act; and (ii) the ~~Unaffiliated FOF Portfolio Funds~~ FOF Portfolio Funds, their principal underwriters and any Broker to sell shares of such Unaffiliated ~~FOF Portfolio Funds to the Funds of Funds in excess of~~

~~the limits set forth in Section 12(d)(1)(B) of the Act; (iii) the Funds of Funds to acquire shares of Affiliated FOF Portfolio Funds in excess of the limits set forth in Section 12(d)(1)(A) and 12(d)(1)(C) of the Act, and (iv) the Affiliated FOF Portfolio Funds, their principal underwriters and any Broker to sell shares of such Affiliated~~ FOF Portfolio Funds to the Funds of Funds in excess of the limits set forth in Section 12(d)(1)(B) of the Act. For the reasons discussed below, the proposed arrangement will not give rise to the policy concerns, each discussed specifically below, which underlie Sections 12(d)(1)(A), (B) and (C) of the Act. Accordingly, Applicants believe that the requested exemptions are consistent with the public interest and protection of investors.

3. No Undue Influence

Applicants submit that the proposed structure will not result in the exercise of undue influence by any Fund of Funds or its affiliated persons over the FOF Portfolio Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated FOF Portfolio Funds, because ~~such Funds~~they are part of the same group of investment companies, nor does it arise with respect to Unaffiliated FOF Portfolio Funds, ~~as each such Fund~~ will operate independently as determined by its own Board (as defined below) and management. Moreover, Applicants represent that, to the extent they are relying on the requested order, they will not invest in the FOF Portfolio Funds with any purpose, or with the effect of, changing or influencing the control of such FOF Portfolio Funds, or in connection with or as a participant in any transaction having that purpose or effect, and they will not take any action to influence the investment advisers or Boards of the FOF Portfolio Funds.¹⁰⁸

Additionally, to limit the control a Fund of Funds or its affiliated persons may have over an Unaffiliated FOF Portfolio Fund, Applicants propose Condition 1 so that :

¹⁰⁸ Applicants acknowledge the requirement to file a Schedule 13G with the Commission with respect to beneficial ownership of more than 5% of any equity security issued by a closed-end fund.

- IndexIQ Advisors and any person controlling, controlled by or under common control with IndexIQ Advisors, 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 IndexIQ Advisors or any person controlling, controlled by or under common control with the IndexIQ Advisors (collectively, “**Group**”) will not control (individually or in the aggregate) any Unaffiliated FOF Portfolio Fund within the meaning of Section 2(a)(9) of the Act, and
- any Sub-Advisors to a Fund of Funds and any person controlling, controlled by or under common control with the Sub-Advisors, 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-Advisors or any person controlling, controlled by or under common control with the Sub-Advisors (collectively, “**Sub-Advisors Group**”) will not control (individually or in the aggregate) any Unaffiliated FOF Portfolio Fund within the meaning of Section 2(a)(9) of the Act.

Also, Applicants have addressed the concern that Unaffiliated FOF Portfolio Closed-End Investment Companies may be unduly influenced by a holder’s ability to vote a large block of stock. The concern arises because closed-end funds are required to hold annual meetings at which directors are elected and shareholder proposals respecting a variety of matters relating to the management and operations of the funds may be presented, including, among other things, proposals to terminate the ~~IndexIQ Advisors~~investment advisory contract or to convert the fund to an open-end fund. By contrast, open-end funds are not required to hold shareholder meetings except in special circumstances. As the Commission observed in the PPI Report, “although the

acquisition of the stock of closed-end companies does not pose the same problem of control through the right of redemption, the power to vote a significant block of stock of a closed-end company may represent the potential for exercise of control.¹¹⁹

Therefore, proposed Condition 1 will require, with respect to any Fund of Fund's investments in an Unaffiliated FOF Portfolio Closed-End Investment Company, (i) each member of the Group or Sub-Advisor 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 to vote its shares of such Unaffiliated FOF Portfolio Closed-End Investment Company in the manner prescribed by Section 12(d)(1)(E) of the Act and (ii) each other member of the Group or Sub-Advisor Group to vote its shares of such Unaffiliated FOF Portfolio Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated FOF Portfolio Closed-End Investment Company's shares. Further, if, as a result of a decrease in the outstanding voting securities of ~~any other~~^{an} Unaffiliated FOF Portfolio Fund, the Group or the Sub-Advisor Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated FOF Portfolio Fund, it will vote its shares of such Unaffiliated FOF Portfolio Fund in the same proportion as the vote of all other holders of such Unaffiliated FOF Portfolio Fund's shares. This condition will not apply to the Sub-Advisor Group with respect to an Unaffiliated FOF Portfolio Fund for which the Sub-Advisor or a person controlling, controlled by or under common control with the Sub-Advisor acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act (in the case of an Unaffiliated FOF Portfolio Investment Company) or as the sponsor (in the case of an Unaffiliated FOF Portfolio UIT). Applicants believe that proposed Condition 1 protects Unaffiliated FOF Portfolio Closed-End Investment Companies from undue influence by a Fund of Funds.

¹¹⁹ PPI Report at 324.

To further limit the potential for undue influence by a Fund of Funds and/or its affiliated persons over an Unaffiliated FOF Portfolio Fund, Applicants propose Condition 2 which precludes a Fund of Funds or IndexIQ Advisors, any Sub-Advisor, 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 (each, a “**Fund of Funds Affiliate**”) from taking advantage of an Unaffiliated FOF Portfolio Fund with respect to transactions between a Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated FOF Portfolio Fund or its investment adviser(s), sponsor, promoter and principal underwriter and any person controlling, controlled by, or under common control with any of those entities (each, an “**Unaffiliated FOF Portfolio Fund Affiliate**”). No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated FOF Portfolio Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated FOF Portfolio Fund or an Unaffiliated FOF Portfolio Fund Affiliate.

In seeking to limit the potential for undue influence and conflicts of interest, Applicants propose Condition 3 which requires that, prior to investing in Unaffiliated FOF Portfolio Funds, the Board¹² of each Fund of Funds, including a majority of the directors or trustees who are not “interested persons” as defined in Section 2(a)(19) of the Act (“**Independent Trustees**”), will adopt procedures reasonably designed to ~~assure~~ensure that IndexIQ Advisors and any Sub-Advisor to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration the Fund of Funds or a Fund of Funds Affiliate receives from an Unaffiliated FOF Portfolio Fund or an Unaffiliated FOF Portfolio Fund Affiliate in connection with any services or transactions. Further, proposed Condition 4 provides

¹² ~~The term “**Board**” as used in this Application, refers to the board of directors or trustees, as applicable, of the specified entity~~

that once an investment by a Fund of Funds in the securities of an Unaffiliated FOF Portfolio Investment Company exceeds the limit of Section 12(d)(1)(A)(i) of the Act, the ~~board of directors or trustees~~Board of the Unaffiliated FOF Portfolio Fund (~~“Unaffiliated Fund Board”~~), including a majority of its ~~independent directors or trustees~~Independent Trustees, will determine that any consideration paid by the Unaffiliated FOF Portfolio Investment Company to the 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 services and benefits received by the Unaffiliated FOF Portfolio Investment Company; (b) is within the range of consideration that the Unaffiliated FOF Portfolio 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 will not apply with respect to any services or transactions between an Unaffiliated FOF Portfolio Investment Company and its investment adviser, or any person controlling, controlled by, or under common control with such investment adviser.

In addition, Applicants have addressed concerns regarding undue influence and conflicts of interest by proposing Condition 5 which provides 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 FOF Portfolio Investment Company, or sponsor of, an Unaffiliated FOF Portfolio UIT) will cause an Unaffiliated FOF Portfolio 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, 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 (each, an “**Underwriting Affiliate**,” except any person whose relationship to the Unaffiliated FOF Portfolio Fund is covered by Section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is referred to as an “**Affiliated Underwriting**.”

Furthermore, Applicants have proposed Condition 6 which requires that, prior to an investment by a Fund of Funds in the securities of an Unaffiliated FOF Portfolio Investment Company exceeding the limit of Section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated FOF Portfolio Investment Company, including a majority of its Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated FOF Portfolio Investment Company in an Affiliated Underwriting, 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 Fund of Funds’ investment in such Unaffiliated FOF Portfolio Investment Company. The Board of the Unaffiliated FOF Portfolio Investment Company will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated FOF Portfolio 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 FOF Portfolio 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 ~~assure~~ensure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

Also, proposed Condition 7 requires that the Unaffiliated FOF Portfolio Investment Company will also keep records concerning its purchases in Affiliated Underwritings. Specifically, the Unaffiliated FOF Portfolio Investment Company will maintain and preserve permanently, in an easily accessible place, a written copy of the procedures described above, 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 in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each such purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated FOF Portfolio Investment Company 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 FOF Portfolio Investment Company were made.

To further ensure that an Unaffiliated FOF Portfolio Investment Company understands and appreciates the implications of a Fund of Funds' investment under the Requested Relief, proposed Condition 8 requires, prior to its investment in the shares of an Unaffiliated FOF Portfolio Investment Company in excess of the limit of Section 12(d)(1)(A)(i) of the Act, that a Fund of Funds and the Unaffiliated FOF Portfolio Investment Company will execute an 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 ("**FOF Participation Agreement**"). At the time of its investment in shares of an Unaffiliated

FOF Portfolio Investment Company in excess of the limit in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated FOF Portfolio Investment Company of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated FOF Portfolio Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated FOF Portfolio Investment Company of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated FOF Portfolio Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the FOF 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. An Unaffiliated FOF Portfolio Investment Company (other than an ~~Unaffiliated FOF Portfolio ETF or an Unaffiliated FOF Portfolio Closed-End Fund~~[ETF or closed-end fund](#) 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.¹⁰

4. No Excessive Layering of Fees

Applicants submit that the ~~Funds~~[funds](#) of ~~Funds~~[funds](#) structure as described herein will not result in excessive layering of fees. Based on the proposed structure, Applicants do not believe that the ~~Funds~~[funds](#) of ~~Funds~~[funds](#) arrangement will result in excessive layering of fees because the arrangement includes safeguards designed to address this issue. Within the structure, the FOF Portfolio Funds may pay advisory fees to their respective adviser. In addition, the FOF

¹⁰ An Unaffiliated FOF Portfolio Fund, including an Unaffiliated FOF Portfolio ETF or an Unaffiliated FOF Portfolio Closed-End Investment Company, would 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 FOF Participation Agreement with the Fund of Funds. In addition, subject solely to the giving of notice to a Fund of Funds and the passage of a reasonable notice period, an Unaffiliated FOF Portfolio Fund (including an Unaffiliated FOF Portfolio ETF or Unaffiliated FOF Portfolio Closed-End Investment Company) could terminate a FOF Participation Agreement with the Fund of Funds. The terms of the FOF Participation Agreement will specify that the obligations of the Unaffiliated FOF Portfolio Fund and its Board related to shares already purchased and held by a Fund of Funds will survive termination of the FOF Participation Agreement until the Fund of Funds reduces its holdings in the Unaffiliated FOF Portfolio Fund below the limit set forth in Section 12(d)(1)(A)(i) of the Act.

Portfolio Funds will pay fees to their respective service providers for all other services relating to their operations, including custody, transfer agency and fund administration (*e.g.*, compliance and fund accounting). FOF Portfolio Funds may also impose Rule 12b-1 fees or service fees from which payments are made to third parties for providing administrative, sub-transfer agency or other services beneficial to shareholders. Applicants acknowledge that the Shareholders of each Fund of Funds indirectly will pay their proportionate share of any Unaffiliated FOF Portfolio Fund fees and expenses.

Applicants observe that each Fund of Funds will also pay its own advisory, administrative, custody, transfer agency, legal, accounting and other expenses. Such services to the Funds of Funds are different from the services provided to the FOF Portfolio Funds because each Fund of Funds is a separate entity with its own advisory, administrative, compliance, record keeping, and custody needs.

However, to ensure that the investment advisory or management fees are not duplicative, Applicants propose Condition 9, which requires that prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory or management contract under Section 15 of the Act, the Board of each Fund of Funds, including a majority of its 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 FOF Portfolio Fund's advisory contract. 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.

In addition, in accordance with proposed Condition 10, IndexIQ Advisors 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 FOF Portfolio Investment Company pursuant to Rule 12b-1 under the Act) received from an Unaffiliated FOF Portfolio Fund by IndexIQ Advisors, or an affiliated person of IndexIQ Advisors, other than any advisory fees paid to IndexIQ Advisors or an affiliated person of IndexIQ Advisors by the Unaffiliated FOF Portfolio Investment Company in connection with the investment by the Fund of Funds in the Unaffiliated FOF Portfolio ~~Investment Company~~Fund. Any Sub-Advisor for a Fund of Funds will waive fees otherwise payable to the Sub-Advisor, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Advisor or an affiliated person of the Sub-Advisor from an Unaffiliated FOF Portfolio ~~Investment Company~~Fund, other than any advisory fees paid to the Sub-Advisor received or an affiliated person by the Unaffiliated FOF Portfolio Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated FOF Portfolio ~~Investment Company~~Fund made at the direction of the Sub-Advisor. In the event that the Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

Applicants also propose Condition 11, so that, with respect to 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 (“NASD Conduct Rule ~~2830-2830~~”)¹¹. In this regard, Applicants note that, with respect to ~~Unaffiliated FOF Portfolio ETFs and Unaffiliated FOF Portfolio Closed-End Investment Companies~~ETFs and closed-end funds, shares of ETFs and closed-end funds generally are purchased in the secondary market without sales loads (although a Fund of Funds may incur customary brokerage commissions) and closed-end funds and most ETFs do not pay

¹¹ Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

12b-1 fees. Accordingly, there should be no concern of layering of sales loads and 12b-1 fees with regard to an Unaffiliated FOF Portfolio ETF or an Unaffiliated FOF Portfolio Closed-End Investment Company.

5. Structure is not Overly Complex

Applicants assert that the proposed arrangement will not create an overly complex fund structure that would confuse investors, because no FOF Portfolio 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 FOF Portfolio Fund (a) acquires such securities in compliance with Section 12(d)(1)(E) of the Act and either is an Affiliated FOF Portfolio Fund or is in the same group of investment companies as its corresponding master fund, (b) 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 (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such FOF Portfolio 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.

Furthermore, Applicants submit that the proposed arrangement will not confuse investors because the Funds of Funds’ prospectus and sales literature will contain clear, concise “plain English” disclosure designed to inform investors about the unique characteristics of the proposed arrangement, including, but not limited to, the expense structure and the additional expenses of investing in a Fund of Funds holding FOF Portfolio Funds.

In the case of those FOF Portfolio Funds that may operate using a master-feeder structure, having a Fund of Funds as an investor could result in a three-tier arrangement (a Fund of Funds

investing in a feeder fund investing in a master fund). However, the Applicants do not believe that this will result in an overly complex structure, because the master-feeder arrangement is entirely transparent. For any investor, whether a Fund of Funds or any other investor, an investment in a FOF Portfolio Fund that was a feeder fund in a master-feeder arrangement would be no different than investing in an FOF Portfolio Fund that does not use a master-feeder arrangement (i.e., a FOF Portfolio Fund that invests directly in portfolio securities).

B. Section 17(a) Relief

1. Explanation of Section 17(a)

Applicants also seek, pursuant to Sections 6(c) and 17(b) of the Act, an exemption granting relief from the provisions of Section 17(a) of the Act to permit the purchases, sales and redemptions by the Funds of Funds of the shares issued by FOF Portfolio Funds, as well as the purchases, sales and redemptions by such FOF Portfolio Funds of their shares in transactions with the Funds of Funds, as described in clauses (1) through (4) in Section I.A. above.

Section 17(a) of the Act prohibits the purchase or sale of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. An "affiliated person" of another person is defined in Section 2(a)(3) of the Act as:

(3) "Affiliated person of another person means (A) any person directly or indirectly owning, controlling or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

The sale of shares by the FOF Portfolio Open-End Investment Companies and FOF Portfolio UITs to the Funds of Funds and the purchase of those shares from the Funds of Funds

by the FOF Portfolio Open-End Investment Companies and FOF Portfolio UITs (through redemptions) could be deemed to be principal transactions between an affiliated person of a registered investment company and that company under Section 17(a) of the Act.¹⁴¹² For example, because IndexIQ Advisors serves as investment adviser to the Funds of Funds and to the Affiliated FOF Portfolio Funds, the Funds of Funds and the Affiliated FOF Portfolio Funds may be deemed to be under the common control of IndexIQ Advisors and therefore affiliated persons of one another. The Funds of Funds and any Unaffiliated FOF Portfolio Open-End Investment Company 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 Unaffiliated FOF Portfolio Open-End Investment Company's outstanding voting securities. Also, the sale of shares by Unaffiliated FOF Portfolio Funds to the Fund of Funds and the redemption of the shares of Unaffiliated FOF Portfolio Funds by the Fund of Funds may be deemed to violate Section 17(a) of the Act. Similarly, the participation by the Fund of Funds in a follow-on offering of any Unaffiliated FOF Portfolio Closed-End Investment Company may be deemed to violate Section 17(a) of the Act.¹⁵¹³

2. Request for an Order of Exemption Pursuant to Sections 17(b) and 6(c)

Section 17(b) of the Act permits the Commission to grant an order permitting such transactions as otherwise might be prohibited under Section 17(a) of the Act if the Commission finds that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person

¹⁴¹² 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 a FOF Portfolio Fund or (b) an affiliated person of a ~~FOF Portfolio Fund-of Funds~~, or an affiliated person of such person, for the sale by the FOF Portfolio Fund of its shares to a Fund of Funds may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgement.

¹⁵¹³ Further, Applicants would not require relief from Section 17(a) for secondary market transactions in the shares of any Unaffiliated FOF Portfolio ETF or Unaffiliated FOF Portfolio Closed -End Investment Company, regardless of whether the Fund of Funds and such Unaffiliated FOF Portfolio ETF or Unaffiliated FOF Portfolio Investment Company may be deemed to be affiliated persons.

concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the Act.

Additionally, Section 6(c) of the Act provides that:

~~the~~(c) The Commission, by ~~rule or~~rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that 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 this title.

The Commission has routinely granted relief from Section 17(a) to permit registered open-end funds to sell their shares to other registered open-end funds, which supports Applicants request for relief to permit sales by Unaffiliated FOF Portfolio Open-End Investment Companies and Affiliated FOF Portfolio Open-End Investment Companies to a Fund of Funds. Applicants do not believe that the policy considerations for relief from Section 17(a) are any different in the context of sales by an Unaffiliated FOF Portfolio Open-End Investment Company and an Affiliated FOF Portfolio Open-End Investment Company, an Unaffiliated FOF Portfolio Closed-End Investment Company and an Affiliated Closed-End Investment Company, an Affiliated FOF Portfolio ETF and an Unaffiliated FOF Portfolio ETF, to a Fund of Funds. In all such contexts, Applicants submit that the principal policy concern is the potential for overreaching of the Affiliated FOF Portfolio Fund by the Fund of Funds. As stated above, there is only one type of sales transaction by an Unaffiliated FOF Portfolio Closed-End Investment Company or Affiliated Closed-End Investment Company that would require relief from Section 17(a) — namely, an underwritten initial or follow-on offering made by such Unaffiliated FOF Portfolio Closed-End Investment Company or Affiliated FOF Portfolio Closed-End Investment Company. In such a transaction, the Unaffiliated FOF Portfolio Closed-End Investment

Company or Affiliated FOF Portfolio Closed-End Investment Company's shares must, as a regulatory matter, be priced at NAV (plus the cost of any distributing commission or discount), unless the offering fits within a narrow range of exceptions that are designed to limit overreaching by the selling fund. For this reason — namely, NAV pricing — Applicants do not believe that Section 17(a) relief to permit sales of shares by Unaffiliated FOF Portfolio Closed-End Investment Companies or Affiliated FOF Portfolio Closed-End Investment Companies presents any different concerns or considerations than are presented in connection with Section 17(a) relief to permit sales of shares by Unaffiliated FOF Portfolio Open-End Investment Companies and/or Affiliated FOF Portfolio Open-End Investment Companies to Funds of Funds. Thus, Applicants believe that the policy considerations support the relief requested from Section 17(a).

Applicants note that the Commission has issued the ETF Funds of Funds Orders on applications for relief virtually identical to that requested by the Applicants relating to relief from the provisions of Section 17(a) of the Act. Applicants believe that the proposed transactions described in this Application are the same as those stated in the applications for the ETF Funds of Funds Orders, and that, similarly, satisfy the requirements for relief under both Sections 17(b) and 6(c) as the terms are fair and reasonable and do not involve overreaching. The terms upon which any FOF Portfolio 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. Finally, Applicants submit that the proposed transactions will be consistent with the policies of each Fund of Funds and each

FOF Portfolio Fund and with the general purposes of the Act.¹⁶¹⁴ The investment by a Fund of Funds in shares of each type of FOF Portfolio Fund and the issuance of shares of each type of FOF Portfolio Fund to a Fund of Funds will be effected in accordance with the investment policies contained in the registration statement of such Fund of Funds and such FOF Portfolio Funds, respectively.

C. Rule 12d1-2 Relief

1. Explanation of Rule 12d1-2

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 another investment company except in accordance with the limits set forth in that Section. Section 12(d)(1)(G) of the Act, in relevant part, provides that Section 12(d)(1) will not apply to securities of a registered open-end investment company or a registered UIT (referred to in this paragraph as the “**acquired company**”) purchased or otherwise acquired by a registered open-end investment company or a registered UIT (referred to in this paragraph as the “**acquiring company**”), if (a) the acquired company and the acquiring company are part of the same group of investment companies, (b) securities of the acquired company, securities of other registered open-end investment companies

¹⁶¹⁴ Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated FOF Portfolio ETF, an Affiliated FOF Portfolio ETF, an Unaffiliated FOF Portfolio Closed -End Investment Company or an Affiliated FOF Portfolio Closed -End Investment Company through secondary market transactions rather than through principal transactions with such Unaffiliated FOF Portfolio ETF, Affiliated FOF Portfolio ETF, Unaffiliated FOF Portfolio Closed -End Investment Company, or Affiliated FOF Portfolio Closed -End Investment Company. 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 Unaffiliated FOF Portfolio ETF or an Affiliated FOF Portfolio ETF or Unaffiliated FOF Portfolio Closed -End Investment Company or an Affiliated Closed -End Investment Company to purchase and redeem shares from such Unaffiliated FOF Portfolio ETF or an Affiliated FOF Portfolio ETF and to purchase shares from such Unaffiliated FOF Portfolio Closed -End Investment Company or an Affiliated Closed -End Investment Company. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where an Unaffiliated FOF Portfolio ETF or an Affiliated FOF Portfolio ETF or Unaffiliated FOF Portfolio Closed -End Investment Company or an Affiliated Closed -End Investment Company 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 any such Unaffiliated FOF Portfolio Closed -End Investment Company or an Affiliated Closed -End Investment Company is also an investment adviser to the Fund of Funds.

and registered UITs that are part of the same group of investment companies, Government securities, and short-term paper are the only investments held by the acquiring company, (c) the aggregate sales loads and distribution-related fees of the acquiring company and acquired company are not excessive under rules adopted pursuant to Section 22(b) or Section 22(c) of the Act by a securities association registered under Section 15A of the 1934 Act or by the Commission, and (d) the acquired company has a policy that prohibits it from acquiring any securities of registered open-end investment companies or registered UITs in reliance on Section 12(d)(1)(G) or Section 12(d)(1)(F).

In 2006, the Commission adopted Rule 12d1-2 under the Act.⁴⁷¹⁵ Rule 12d1-2 permits a registered open-end investment company or a registered UIT that relies on Section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, Government securities, and short-term paper: (1) securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on Section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on Rule 12d1-1 under the Act. For the purposes of Rule 12d1-2, the term "securities" means any security as that term is defined in Section 2(a)(36) of the ~~1940~~ Act.⁴⁸¹⁶ The Commission noted in the Rule 12d1-2 Adopting Release that permitting an affiliated fund of funds to invest, consistent with the fund's investment policies, directly in stocks, bonds, and other types of securities "would allow an acquiring fund greater flexibility in meeting investment objectives that may not be met as well by investments in other funds in the same fund group, while not presenting any additional concerns that Section

⁴⁷¹⁵ See Fund of Funds Investments, Investment Company Act Release No. 27399 (June 20, 2006) ("Rule 12d1-2 Adopting Release").

⁴⁸¹⁶ See *id.* at 17, n.58.

12(d)(1)(G) was intended to address.”¹⁹¹⁷ The adoption of Rule 12d1-2 also reflects the Commission's response to Congress' expectation “that the Commission will use this authority [set forth in Section 12(d)(1)(J)] to adopt rules and process exemptive applications in the fund of funds area in a progressive way as the fund of funds concept continues to evolve over time.”²⁰¹⁸

Section 6(c) of the Act provides a means for the Commission to respond to developments in the financial markets not specifically contemplated when the Act was passed or subsequently amended. It permits the Commission to grant exemptions from particular provisions of the Act, or any rule thereunder, that would inhibit the development of new and innovative investment products. Section 6(c) 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 or provisions of the Act or of any rule or regulation thereunder, if and to the extent that 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.

2. Basis for Rule 12d1-2 Relief

Applicants submit that the opportunity to invest in Other Investments will provide a Section 12(d)(1)(G) Fund of Funds greater flexibility to meet its investment objective. A Section 12(d)(1)(G) Fund of Funds would use Other Investments for a purpose that is consistent with its investment objective, policies, strategies and limitations. Consistent with its fiduciary obligations under the Act, a Section 12(d)(1)(G) Fund of Funds' Board will review the advisory fees charged by the Section 12(d)(1)(G) Fund of Funds' investment adviser(s) to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services

¹⁹¹⁷ *Id.* at 17-18.

²⁰¹⁸ See also, *In the Matter of MetLife Investors USA Insurance Company, et al.*, Investment Company Act Release Nos. 27028 (Aug. 11, 2005) (notice) and 27059 (Sept. 7, 2005) (order).

provided pursuant to the advisory agreement of any investment company in which the Section 12(d)(1)(G) Fund of Funds may invest.

Applicants request an order under Section 6(c) of the Act for an exemption from Rule 12d1-2(a) thereunder to allow the Section 12(d)(1)(G) Funds of Funds to invest in Other Investments. The Applicants state that the proposed arrangement would comply with Rule 12d1-2(a) under the Act, but for the fact that the Section 12(d)(1)(G) Funds of Funds may invest a portion of their assets in Other Investments. As indicated in Section IV.A.(1) above, Section 12(d)(1) of the Act was enacted to prevent unregulated pyramiding of investment companies and the abuses that are perceived to arise from such pyramiding, including the following: (1) duplicative costs; (2) the exercise of undue influence or control over the underlying funds; and (3) the complexity of such arrangements. Section 12(d)(1)(G) reflects a determination by Congress that certain fund of funds arrangements do not raise the concerns underlying the prohibitions in Sections 12(d)(1)(A) and 12(d)(1)(B). Section 12(d)(1)(G) addresses these concerns by (i) requiring that the acquiring company and the acquired company be part of the same group of investment companies, (ii) limiting charges and fees of the acquiring company and acquired company, and (iii) requiring that the acquired company not act as a fund of funds itself. The adoption of Rule 12d1-2 demonstrates a determination by the Commission that fund of funds investments in stocks, bonds and other types of securities that are not issued by registered investment companies do not raise any of the concerns that Section 12(d)(1)(G) was intended to address.

Likewise, Applicants submit that permitting a Section 12(d)(1)(G) Fund of Funds to invest in Other Investments in furtherance of its investment objective, policies, strategies and limitations as requested herein will not raise any of the concerns underlying the prohibitions in

Sections 12(d)(1)(A), 12(d)(1)(B) and 12(d)(1)(C). Rather, this additional flexibility will provide a Section 12(d)(1)(G) Fund of Funds with a broader array of investment options through which to pursue its investment objective.

Applicants note that the Commission recently issued the Global X Order and the First Trust Order on applications for relief virtually identical to that requested by the Applicants relating to relief from the provisions of Rule 12d1-2. Applicants submit that the requested exemption offers significant benefits, as detailed above, and 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 1940 Act],” and therefore meets the standards for relief set forth in Section 6(c) of the Act. As stated below, the Commission has already granted to a number of other applicants relief similar to the relief from Rule 12d1-2 requested in this Application.

V. PRECEDENTS IN SUPPORT OF THE REQUEST FOR EXEMPTION

A. Investments in FOF Portfolio Funds by Funds of Funds

The Commission has granted exemptive orders to certain ETF groups and mutual fund complexes to establish funds of funds arrangements with both affiliated and unaffiliated open-end investment companies. ~~See, for example, the ETF Funds of Funds Orders, where the Commission granted exemptive relief identical to that requested in this Application, and permitted series of the Global X Trust, First Trust, PowerShares Trust and van Eck Trust, respectively, to (i) invest in open-end investment companies.~~ Also, Applicants note that recently the Commission has issued an order to several ETFs on applications for relief virtually identical to that requested by the Applicants relating to investments in closed-end investment companies, ~~ETFs and UITs that are both affiliated and unaffiliated investment companies, in excess of the limitations contained in Section 12(d)(1) of the Act, as well as (ii) invest in such investment~~

~~companies that are not part of the same “group of investment companies” as defined in Section 12(d)(1)(G) of the Act, in excess of the 12(d)(1) limitations. See, In the Matter of Global X Funds, et al., Investment Company Act Release Nos. 30426 (March 14, 2013) (notice) and 30454 (April 9, 2013) (order) (together, “Global X Order”); First Trust Exchange-Traded Fund et al., Investment Company Act Release Nos. 30345 (January 8, 2013) (notice) and 30377 (February 5, 2013) (order) (together, “First Trust Order”); PowerShares Exchange-Traded Fund Trust, et al., Investment Company Act Release Nos. 30222 (September 26, 2012) (notice) and 30238 (October 23, 2012) (order) (together, “PowerShares Order”) and In the Matter of Van Eck VIP Trust et al., Investment Company Act Release Nos. 30063 (May 12, 2012) (notice) and 30096 (June 5, 2012) (order) amending a prior order In the Matter of Van Eck Worldwide Insurance Trust, et al., Investment Company Act Release Nos. 27820 (May 9, 2007) (notice) and 27849 (June 1, 2007) (order) (together, “Van Eck Order”) (collectively, “ETF Funds of Funds Orders”).~~ In addition, Applicants note that the Commission recently issued the Global X Order and the First Trust Order with respect to applications for relief from Rule 12d1-2 that are virtually identical to that requested by Applicants.

~~Applicants also note the relief granted in Schwab Capital Trust, et al. Investment Company Act Release Nos. 24067 (October 1, 1999) (notice) and 24113 (October 27, 1999) (order) (“Schwab Order”). There, applicants requested an exemption under Section 12(d)(1)(J) of the Act from Sections 12(d)(1)(A) and (B) of the Act to permit certain series of the Schwab trusts (“Schwab Trusts”) to invest (a) in other series of the Schwab Trusts and other registered open-end management investment companies that are part of the same “group of investment companies” as defined in Section 12(d)(1)(G) of the Act, and (b) in other registered open-end investment companies that are not part of the same group of investment companies as the~~

~~Schwab Trusts. The Schwab Order also permits the Schwab Trusts to make direct investments in stocks, bonds, and any other securities which are consistent with their investment objective(s).²¹~~

~~In addition, Applicants note that the relief requested herein is substantially similar to the relief requested, and granted in the Van Eck Order which permitted funds of funds to invest in closed-end investment companies. Further, Applicants note that substantially similar relief was granted in *Members Mutual Funds, et al.*, Investment Company Act Release Nos. 27598 (December 13, 2006) (notice) and 27657 (January 9, 2007) (order); *John Hancock Trust, et al.*, Investment Company Act Release Nos. 27848 (May 30, 2007) (notice) and 27873 (June 26, 2007) (order); *Northern Institutional Funds, et al.*, Investment Company Act Release Nos. 28119 (January 16, 2008) (notice) and 28149 (February 12, 2008) (order); and *Goldman Sachs Trust, et al.*, Investment Company Act Release Nos. 28347 (July 31, 2008) (notice) and 28366 (August 26, 2008) (order) and *In the Matter of EQ Advisors Trust, et al.*, Investment Company Act Release Nos. 29294 (June 4, 2010) (notice) and 29336 (June 30, 2010) (order). Applicants' requested relief differs from this precedent only in that Applicants seek an order that would allow the Funds of Funds to invest in closed-end investment companies, in addition to open-end investment companies and UITs. In addition, Applicants note that the Commission has granted Section 12(d)(1) exemptive relief to funds of funds organized as UITs, which relief extends to investments in both open-end and closed-end funds.²²~~

²¹ See also, *In the Matter of MetLife Investors USA Insurance Company, et al.*, Investment Company Act Release Nos. 27028 (Aug. 11, 2005) (notice) and 27059 (Sept. 7, 2005) (order).

²² See, e.g., *In the Matter of First Trust Portfolios, L.P., et al.*, Investment Company Act Release Nos. 26261 (Nov. 21, 2003) (notice) and 26297 (Dec. 17, 2003) (order); *In the Matter of Matrix Capital Group, Inc., et al.*, Investment Company Act Release Nos. 26173 (Sept. 4, 2003) (notice) and 26197 (Sept. 30, 2003) (order); *In the Matter of Nuveen Investments, et al.*, Investment Company Act Release Nos. 24892 (Mar. 13, 2001) (notice) and 24930 (April 6, 2001) (order); and *In the Matter of Van Kampen Funds Inc. and Van Kampen Focus Portfolios*, Investment Company Act Release Nos. 24548 (June 29, 2000) (notice) and 24566 (July 25, 2000) (order) (collectively, "**UIT Orders**").

~~Applicants do not see any policy reason to restrict Section 12(d)(1) exemptive relief to investments in, in addition to UITs, open-end funds only. Indeed, Applicants believe that, in one respect, a Fund of Funds' investments in closed-end funds raise less concern under Section 12(d) than do investments in open-end funds. Applicants understand that one of the principal concerns intended to be addressed by Section 12(d) is the potential for a fund of funds to exercise undue influence over the management and operation of an FOF Portfolio Fund through the threat of large-scale redemptions. As has been discussed above, this concern is not applicable to a Fund of Funds' investment in closed-end funds because closed-end funds do not issue redeemable securities; rather, sales can only be effected through transactions in the secondary market. Because these sales would not require the closed-end fund to alter its investments nor deplete assets of the closed-end fund, a Fund of Funds should not be able to influence the management or operation of a closed-end fund through threats of large-scale redemptions of shares.~~

~~Applicants have reviewed the conditions imposed in the ETF Funds of Funds Orders, as well as those contained in the UIT Orders, and the reasons therefor, and believe that they are equally appropriate and applicable to the relief requested in this Application. Therefore, as discussed above, Applicants have proposed conditions upon those contained in the applications submitted by Global X, First Trust, PowerShares and Van Eck, respectively, in connection with the ETF Funds of Funds Orders.~~

~~Applicants acknowledge that distinctions between funds of funds structured as UITs and the Funds may raise questions regarding whether the Funds of Funds' investments in Unaffiliated FOF Portfolio Closed-End Investment Companies implicate greater concerns with respect to the (i) layering of fees and expenses; and (ii) the exercise of undue influence over Unaffiliated FOF Portfolio Closed-End Investment Companies.²³ As discussed above, Applicants believe that the~~

²³ ~~See PPI Report, cited by the UIT Orders.~~

~~proposed conditions in this Application adequately address these concerns. To summarize, with respect to the concern about the layering of fees and expenses, Applicants note that UITs do not charge advisory fees because they have unmanaged portfolios, and therefore the layering of advisory fees is not a concern. Because the Funds of Funds do charge advisory fees, Applicants have proposed Condition 9 to address this concern because it would require that the Board of each Fund of Funds, including a majority of their Independent Trustees, find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Unaffiliated FOF Portfolio Fund or Affiliated FOF Portfolio Fund in which the Fund of Funds invest, including any Unaffiliated FOF Portfolio Closed-End Investment Company or Affiliated FOF Portfolio Closed-End Investment Company.²⁴~~

~~With respect to undue influence, the UIT Orders discuss the possibility of a depositor or sponsor using its ability to control the secondary market in units of a UIT to exercise undue control over an Unaffiliated FOF Portfolio Fund or Affiliated FOF Portfolio Fund. Specifically, a depositor or sponsor could potentially accumulate a large position in an Unaffiliated FOF Portfolio UIT and threaten to redeem such a position or cause large-scale redemptions by ceasing to maintain a secondary market in units, with adverse consequences to such UIT's underlying fund investments. This concern is not present in the case of the Funds of Funds, because neither~~

²⁴ ~~With respect to fees payable by a Fund of Funds to IndexIQ Advisors or a Sub-Advisor, sales charges and/or services fees, Applicants assert that the issues raised where the fund of funds is a UIT do not differ substantially from the issues raised where the fund of funds is a Fund of Funds, and the conditions in the Prior UIT Orders addressing these fees are substantially similar to Conditions 10 and 11 of the Application.~~

~~the Funds of Funds, IndexIQ Advisors nor their affiliates maintain a secondary market in any Unaffiliated FOF Portfolio Closed-End Investment Companies' shares.²⁵~~

~~Further, although prior orders issued to funds of funds organized as open-end invest submit that such relief is warranted here given the terms and conditions of the Application, which are based on those contained in the applications for relief submitted by applicants in connection with the ETF Funds of Funds Orders. As discussed above, Section 12(d)(1) of the Act is designed to prevent the pyramiding of investment companies and the abuses associated with such pyramiding, including the exercise of undue influence by a fund of funds over underlying funds, layering of fees and unnecessary complexity. Investments by funds of funds in underlying closed-end funds present these same potential abuses. One significant difference between Unaffiliated FOF Portfolio Open-End Investment Companies and Unaffiliated FOF Portfolio Closed-End Investment Companies, however, is that, whereas Unaffiliated FOF Portfolio Open-End Investment Companies may be unduly influenced by the threat of large-scale redemptions, Unaffiliated FOF Portfolio Closed-End Investment Companies cannot be so influenced because they do not issue redeemable securities and, therefore, are not subject to large-scale redemptions. A Fund of Funds may exercise undue influence over an Unaffiliated FOF Portfolio Closed-End Investment Companies, however, through the voting of its shares and this concern may be greater with respect to the Funds of Funds investing in Unaffiliated FOF Portfolio Closed-End Investment Companies than with respect to UITs investing in Unaffiliated FOF Portfolio Closed-End Investment Companies. Nevertheless, Applicants submit that proposed Condition 1 adequately addresses this concern. Therefore, notwithstanding the~~

²⁵ ~~The threat of large scale redemptions of the Unaffiliated FOF Portfolio Fund's securities is another potential channel for the exercise of undue influence, and another consequence of the unmanaged nature of UITs is that the threat of large scale redemptions is mitigated. However, even where the fund of funds is managed, this concern is of little relevance to Unaffiliated FOF Portfolio Closed-End Investment Companies as they do not honor redemptions and most transactions in their shares occur on the secondary market.~~

~~differences between UITs and the Funds of Funds discussed above, Applicants believe that the ETF Funds of Funds Order support the view that the conditions included in this Application adequately address the concerns underlying Section 12(d)(1) of the Act as they relate to investments in Unaffiliated FOF Portfolio Closed-End Investment Companies.~~

~~With respect to the other concerns designed to be addressed by Section 12(d)(1) — namely, layering of fees and unnecessary complexity — Applicants see no distinction between investments by funds of funds in open-end funds and closed-end funds. Like investors in funds of funds that invest in open-end underlying funds, investors in funds of funds that invest in closed-end underlying funds are potentially subject to duplicative advisory fees and administrative expenses, including service and custodial fees. Applicants believe that in addition to the safeguards contained in proposed Condition 9, proposed Condition 11 will prevent any sales load and/or service fees charged with respect to a Fund of Funds from exceeding the limits applicable to funds of funds in Conduct Rule 2830, regardless of whether the Fund of Funds invests in Unaffiliated FOF Portfolio Open-End Investment Companies or Unaffiliated FOF Portfolio Closed-End Investment Companies. Applicants believe that investments by Funds of Funds in Unaffiliated FOF Portfolio Closed-End Investment Companies are at least as likely to allow a Fund of Funds to meet this standard as investments in Unaffiliated FOF Portfolio Open-End Investment Companies as few closed-end funds charge service fees, including Rule 12b-1 fees, and purchases of closed-end fund shares on the secondary market are not subject to a sales charge. Thus, Applicants believe that the fee-related conditions protect Fund of Funds investors, as intended.~~

~~Moreover, Applicants submit that Condition 12 adequately protects Fund of Funds investors from unnecessary complexity. Condition 12, in essence, precludes any Unaffiliated~~

~~FOF Portfolio Fund and Affiliated FOF Portfolio Fund from acquiring the securities of another investment company, or any company relying on Section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits set forth in Section 12(d)(1)(A), except to the extent such securities are received as a dividend or in a reorganization or acquired pursuant to exemptive relief granted by the Commission to allow such Unaffiliated FOF Portfolio Fund and Affiliated FOF Portfolio Fund to manage short-term cash balances or engage in inter-fund borrowing and lending transactions. Pursuant to Condition 12, therefore, neither an Unaffiliated FOF Portfolio Open-End Investment Company or Affiliated FOF Portfolio Open-End Investment Company, nor an Unaffiliated FOF Portfolio Closed-End Investment Company or Affiliated FOF Portfolio Closed-End Investment Company can itself be a fund of funds and result in the Fund of Funds being unnecessarily complex.~~

~~Lastly, as mentioned above, Applicants submit that the conditions proposed in this application are virtually identical to those contained in the ETF Funds of Funds Orders and, as such, provide sufficient safeguards to protect against the abuses that Sections 12(d)(1)(A), (B) and (C) and Section 17(a) of the Act were designed to prevent. Therefore, Applicants believe that this Application, including its terms and conditions, appropriately addresses the concerns raised by the proposed investments of the Funds of Funds in the Unaffiliated FOF Portfolio and Affiliated FOF Portfolio Funds and should be granted.~~

VI. CONCLUSIONS

Based upon the foregoing, Applicants believe that it is 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 to issue an order (i) pursuant to Section 12(d)(1)(J) for an exemption from the provisions of Sections 12(d)(1)(A), 12(d)(1)(B) and 12(d)(1)(C), (ii) pursuant to Sections 6(c)

and 17(b) for an exemption from the provisions of Section 17(a) and (iii) pursuant to Section 6(c) of the Act for an exemption from the provisions of Rule 12d1-2 .

VII. APPLICANTS' CONDITIONS

Applicants agree that the order granting the requested Funds of Funds Relief shall be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated FOF Portfolio Fund within the meaning of Section 2(a)(9) of the Act. The members of a Sub-Advisor Group will not control (individually or in the aggregate) an Unaffiliated FOF Portfolio Fund within the meaning of Section 2(a)(9) of the Act. With respect to a Fund's investment in an Unaffiliated FOF Portfolio Closed-End Investment Company, (i) each member of the Group or Sub-Advisor 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 FOF Portfolio Closed-End Investment Company in the manner prescribed by Section 12(d)(1)(E) of the Act and (ii) each other member of the Group or Sub-Advisor Group will vote its shares of the Unaffiliated FOF Portfolio Closed-End Investment Company in the same proportion as the vote of all other holders of the same type of such Unaffiliated FOF Portfolio Closed-End Investment Company's shares. If, as a result of a decrease in the outstanding voting securities of any other Unaffiliated FOF Portfolio Fund, the Group or a Sub-Advisor Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of such Unaffiliated FOF Portfolio Fund, then the Group or the Sub-Advisor Group will vote its shares of the ~~FOF~~ Unaffiliated FOF Portfolio Fund in the same proportion as the vote of all other holders of the

Unaffiliated FOF Portfolio Fund's shares. This condition will not apply to a Sub-Advisor Group with respect to an Unaffiliated FOF Portfolio Fund for which the Sub-Advisor or a person controlling, controlled by, or under common control with the Sub-Advisor acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act (in the case of an Unaffiliated FOF Portfolio Investment Company) or as the sponsor (in the case of an Unaffiliated FOF Portfolio UIT).

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 FOF Portfolio Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated FOF Portfolio Fund or an Unaffiliated FOF Portfolio 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 IndexIQ Advisors and any Sub-Advisor 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 FOF Portfolio Fund or an Unaffiliated FOF Portfolio Fund Affiliate in connection with any services or transactions.
4. Once an investment by a Fund of Funds in the securities of an Unaffiliated FOF Portfolio Investment Company exceeds the limit of Section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated FOF Portfolio Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid

by the Unaffiliated FOF Portfolio 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 FOF Portfolio Investment Company; (b) is within the range of consideration that the Unaffiliated FOF Portfolio 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 FOF Portfolio 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 FOF Portfolio Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated FOF Portfolio Fund to purchase a security in any Affiliated Underwriting.
6. The Board of an Unaffiliated FOF Portfolio Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated FOF Portfolio Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated FOF Portfolio 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 FOF Portfolio 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 FOF Portfolio Investment Company. The Board of the Unaffiliated FOF Portfolio Investment Company will consider, among other things: (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated FOF Portfolio 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 [FOF](#) Portfolio 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 FOF Portfolio 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 FOF Portfolio 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 in 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 FOF Portfolio 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 FOF Portfolio Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated FOF Portfolio 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 FOF Portfolio Investment Company will execute a FOF 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 FOF Portfolio Investment Company in excess of the limit set forth in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated FOF Portfolio Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated FOF Portfolio Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated FOF Portfolio Investment Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated FOF Portfolio Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the FOF 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 Unaffiliated FOF Portfolio Investment Company 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. IndexIQ Advisors 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 FOF Portfolio Investment Company pursuant to Rule 12b-1 under the Act) received from an Unaffiliated FOF Portfolio Fund by IndexIQ Advisors, or an affiliated person of IndexIQ Advisors, other than any advisory fees paid to IndexIQ Advisors or its affiliated person by the Unaffiliated FOF Portfolio Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated FOF Portfolio Fund. Any Sub-Advisor will waive fees otherwise payable to the Sub-Advisor, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Advisor, or an affiliated person of the Sub- Advisor, from an Unaffiliated FOF Portfolio Fund, other than any advisory fees paid to the Sub-Advisor or its affiliated person by the Unaffiliated FOF Portfolio Investment Company in

connection with the investment by the Fund of Funds in the Unaffiliated FOF Portfolio Fund made at the direction of the Sub-Advisor. In the event that the Sub- Advisors waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

~~11~~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 FOF Portfolio 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 FOF Portfolio Fund: (a) acquires such securities in compliance with Section 12(d)(1)(E) of the Act and is either an Affiliated FOF Portfolio Fund or is in the same “group of investment companies” as its corresponding master fund; (b) 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 (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such FOF Portfolio 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.

In addition, Applicants agree that the order granting the requested relief to permit Section 12(d)(1)(G) Funds of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of Rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Section 12(d)(1)(G) Fund of Funds from investing in Other Investments as described in this Application.

VIII. PROCEDURAL MATTERS

All actions necessary to authorize the execution and filing of this Application have been taken and the persons signing and filing this Application are authorized to so sign and file the same. Applicants request that the Commission issue an order without a hearing pursuant to Rule 0-5 under the Act.

IX. REQUEST FOR ORDER OF EXEMPTION

For the foregoing reasons, Applicants request that the Commission enter an order pursuant to Sections 6(c), 12(d)(1)(J) and 17(b) of the Act granting the relief sought by this Application. Applicants submit that the requested exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

X. NAMES AND ADDRESSES

The following are the names and addresses of Applicants:

IndexIQ ETF Trust

IndexIQ Active ETF Trust

IndexIQ Advisors LLC

c/o David Fogel
800 Westchester Avenue, Suite N-611
Rye Brook, NY 10573

ALPS Distributors, Inc.

c/o Thomas A. Carter
Carter1290 Broadway, Suite 1100
Denver, Colorado 80203

All questions concerning this Application should be directed to the persons listed on the cover page of this Application.

AUTHORIZATION
INDEXIQ ETF TRUST

In accordance with Rule 0-2(c) under the Act, Adam S. Patti in his capacity as President the IndexIQ ETF Trust of (the “Trust”), states that all actions necessary to authorize the execution and filing of this application by the Trust have been taken, and that as President thereof, he is authorized to execute and file the same on behalf of the Trust.

/s/ Adam S. Patti

President

~~May 8,~~September 17, 2013

AUTHORIZATION

INDEXIQ ACTIVE ETF TRUST

In accordance with Rule 0-2(c) under the Act, Adam S. Patti in his capacity as President of the IndexIQ Active ETF Trust (the “Trust”), states that all actions necessary to authorize the execution and filing of this application by the Trust have been taken, and that as President thereof, he is authorized to execute and file the same on behalf of the Trust.

/s/ Adam S. Patti

President

~~May 8,~~September 17, 2013

AUTHORIZATION

INDEXIQ ADVISORS LLC

§In accordance with Rule 0-2(c) under the Act, Adam S. Patti in his capacity as Chief Executive Officer of IndexIQ Advisors LLC (the “Advisor”), states that all actions necessary to authorize the execution and filing of this application by IndexIQ Advisors LLC (“**IndexIQ**”) have been taken, and that as Chief Executive Officer thereof, he is authorized to execute and file the same on behalf of IndexIQ.

/s/ Adam S. Patti

Chief Executive Officer

~~May 8,~~September 17, 2013

AUTHORIZATION

ALPS DISTRIBUTORS INC.

In accordance with Rule 0-2(c) under the Act, Thomas A. Carter in his capacity as Director and President of ALPS Distributors Inc. (“**ALPS**”), states that all actions necessary to authorize the execution and filing of this application by ALPS have been taken, and that as Director and President thereof, he is authorized to execute and file the same on behalf of ALPS.

/s/ Thomas A. Carter

Director and President

~~May 8,~~September 17, 2013

VERIFICATION

INDEXIQ ETF TRUST

The undersigned, being duly sworn, deposes and says that he has duly executed the attached application for and on behalf of IndexIQ ETF Trust, that he is the President of such entity and as such is authorized to sign this application on its behalf, and that all actions taken by officers and other persons necessary to authorize deponent to execute and file such instrument have been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

/s/ Adam S. Patti

President

~~May 8,~~ September 17, 2013

VERIFICATION

INDEXIQ ACTIVE ETF TRUST

The undersigned, being duly sworn, deposes and says that he has duly executed the attached application for and on behalf of, IndexIQ Active ETF Trust, that he is the President of such entity and as such is authorized to sign this application on its behalf, and that all actions taken by officers and other persons necessary to authorize deponent to execute and file such instrument have been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

/s/ Adam S. Patti

President

~~May 8,~~ September 17, 2013

VERIFICATION

INDEXIQ ADVISORS LLC

The undersigned, being duly sworn, deposes and says that he has duly executed the attached application for and on behalf of, IndexIQ Advisors LLC, that he is the Chief Executive Officer of such entity and as such is authorized to sign this application on its behalf, and that all actions taken by officers and other persons necessary to authorize deponent to execute and file such instrument have been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

//s/ Adam S. Patti

Chief Executive Officer

~~May 8,~~ September 17, 2013

VERIFICATION

ALPS DISTRIBUTORS INC.

The undersigned, being duly sworn, deposes and says that he has duly executed the attached application for and on behalf of, ALPS Distributors Inc., that he is a Director and President of such entity and as such is authorized to sign this application on its behalf, and that all actions taken by officers and other persons necessary to authorize deponent to execute and file such instrument have been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

/s/ Thomas A. Carter

Director and President

~~May 8,~~ September 17, 2013

Document comparison by Workshare Compare on Monday, September 16, 2013
12:46:13 PM

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Document 1 ID	interwovenSite://LOCAL/US/84730633/1
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Document 2 ID	interwovenSite://LOCAL/US/84730633/3
Description	#84730633v3<US> - Amendment No. 1 to IndexIQ Fund of Funds 1940 Act Application (12d) - August, 2013
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Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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