

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No.28123; 812-13363]

The TIGERS Revenue Trust and VTL Associates, LLC; Notice of Application

January 18, 2008

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

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act; and under section 12(d)(1)(J) of the Act for exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of the Application: The applicants request an order that would permit (a) series of open-end management investment companies to issue shares (“Shares”) that can be redeemed only in large aggregations (“Creation Units”); (b) secondary market transactions in Shares to occur at negotiated prices; (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (“Securities Act”); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: The TIGERS Revenue Trust (the “Trust”) and VTL Associates, LLC (the “Adviser”).

Filing Dates: The application was filed on February 8, 2007 and amended on September 5, 2007 and December 7, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, One Commerce Square, 2005 Market Street, Suite 2020, Philadelphia, PA 19103.

For Further Information Contact: Barbara T. Heussler, Senior Counsel, at (202) 551-6990, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-0102 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trust is registered as an open-end management investment company and is organized as a Delaware statutory trust authorized to issue multiple series or portfolios. The Trust intends to offer and sell Shares of at least one or more separate investment portfolios (“each an “Index Fund”).¹ The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the “Advisers Act”) and will serve as the investment adviser to each Index Fund. The Adviser will enter into a sub-advisory agreement with The Bank of New York (“BNY”) to serve as a sub-adviser with respect to the Initial Index Funds. BNY, and any other sub-adviser to the Index Funds, is or will be registered as an investment adviser under the Advisers Act. Foreside Fund Services, LLC (“Distributor”), a broker-dealer registered under the Securities Exchange Act of 1934 (the “Exchange Act”), will serve as the principal underwriter and distributor for the Index Funds.

2. Each Index Fund will hold certain securities (“Portfolio Securities”) selected to correspond generally to the price and yield performance, before fees and expenses, of a specified index of domestic equity securities (an “Underlying Index”). No entity that creates, compiles, sponsors or maintains an Underlying Index (“Index Provider”) is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, its investment adviser (“VTL”), any sub-adviser of a series of the Trust (including BNY), a promoter of the Trust or any of its series, or the Trust’s distributor (including Foreside Fund Services, LLC). The Underlying Index for the TIGERS Revenue-Weighted Large Cap Index Fund is the RevenueShares Large Cap Index; the Underlying Index for the TIGERS Revenue-

¹ All Index Funds and the Trust, wherever appropriate, are collectively referred to herein as the “Trust.” The Trust currently intends to offer three series, the TIGERS Revenue-Weighted Large Cap Index Fund, TIGERS Revenue-Weighted Mid Cap Index Fund and TIGERS Revenue-Weighted Small Cap Index Fund (collectively, the “Initial Index Funds”).

Weighted Mid Cap Index Fund is the RevenueShares Mid Cap Index; and the Underlying Index for the TIGERS Revenue-Weighted Small Cap Index Fund is the RevenueShares Small Cap Index. The Trust may offer additional Index Funds in the future based on other Underlying Indexes comprised of domestic equity securities (“Future Index Funds”).² Any Future Index Funds relying on any order granted pursuant to this Application will comply with the terms and conditions stated in this application and will be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser.

3. The investment objective of each Index Fund will be to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. An Index Fund will utilize either a “replication strategy” or “representative sampling” which will be disclosed with regard to each Index Fund in its prospectus (“Prospectus”).³ An Index Fund using a “replication strategy” generally will invest in all of the Component Securities in its Underlying Index in approximately the same weightings as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is illiquid, an Index Fund may use a “representative sampling” strategy pursuant to which it will invest in some, but not all of the relevant Component Securities.⁴ Applicants anticipate that an Index Fund that utilizes a “representative sampling” strategy will

² For purposes of this Application, references to “Index Funds” include both the Initial Index Funds and all Future Index Funds.

³ Applicants represent that an Index Fund will normally invest at least 95% of its total assets in the component securities that comprise its Underlying Index (“Component Securities”). Each Index Fund also may invest up to 5% of its assets in certain futures contracts, options on futures contracts, options, and swaps, as well as cash and cash equivalents, and other securities that are not included in its Underlying Index.

not track the price and yield performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Index Fund's tracking error relative to the performance of its Underlying Index should be 5% or less.

4. Shares of the Index Funds will be sold in Creation Units of 50,000 Shares, as will be specified in the Index Funds' Prospectus. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust and the Distributor ("Authorized Participant"). An Authorized Participant must be either: (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission; or (b) a participant ("DTC Participant") in the Depository Trust Company ("DTC"). Shares of each Index Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser to correspond generally to the price and yield performance, before fees and expenses, of the relevant Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment ("Cash Component").⁵ The Cash Component is generally an amount equal to the difference between (a) the net asset value ("NAV") (per Creation Unit) of the Index Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.⁶ Each Index Fund reserves the right

⁴ Under the "representative sampling" strategy, the Adviser or BNY will seek to construct an Index Fund's portfolio so that its market capitalization, industry weightings, fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

⁵ The deposit of the requisite Deposit Securities and the Cash Component are collectively referred to as a "Fund Deposit."

⁶ The Trust will sell and redeem Creation Units of each Index Fund on any day that the Index Fund is open for business, including as required by section 22(e) of the Act (a "Business Day"). In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each Business Day, the Cash Component effective as of the previous Business Day, per outstanding Share of each Index Fund, will be made available. The Exchanges intend to disseminate, every 15 seconds, during their respective regular trading hours,

to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (“Transaction Fee”) to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.⁷ The maximum Transaction Fees relevant to each Index Fund will be fully disclosed in the Prospectus of such Index Fund and the method for calculating the Transaction Fees will be disclosed in each Index Fund’s Prospectus or statement of additional information (“SAI”). Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Trust. The Distributor also will be responsible for delivering the Index Fund’s Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

5. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on the NYSE Arca, Inc. (the “NYSE”) or another U.S. national securities exchange as defined in section 2(a)(26) of the Act (“Other Exchanges”) (the NYSE and the Other Exchanges are herein each referred to as an “Exchange” and collectively as the “Exchanges”). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market on the Exchange for Shares trading on the Exchange (the “Exchange Specialist”). If the Nasdaq Stock

through the facilities of the Consolidated Tape Association, an approximate amount per Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

⁷ Where an Index Fund permits an in-kind purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such

Market, Inc. (“Nasdaq”) is the listing Exchange, one or more member firms of Nasdaq will act as a market maker (“Market Maker”) and maintain a market on Nasdaq for Shares trading on Nasdaq.⁸ Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold on an Exchange will be subject to customary brokerage commissions and charges. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). An Exchange Specialist or Market Maker, in providing a fair and orderly secondary market for the Shares, may find it appropriate to purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.⁹ Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

6. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Index Fund, or tender such Shares for redemption to the Index Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit redemptions (“Fund Securities”) on the date that the request for

Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

⁸ If Shares are listed on the Nasdaq, no particular Market Maker will be contractually obligated to make a market in Shares, although Nasdaq’s listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Shares to maintain the listing. Applicants state that registered Market Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

⁹ Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

redemption is submitted, which may not be identical to the Deposit Securities required to purchase Creation Units on that date,¹⁰ and (b) a “Cash Redemption Amount,” consisting of an amount calculated in the same manner as the Cash Component, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities on the same day. The relevant Index Fund may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeeming investor if the Trust determines that it is warranted due to unusual circumstances, such as when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities.

7. Neither the Trust nor any Index Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. The designation of the Trust and the Index Funds in all marketing materials will be limited to the terms “exchange-traded fund,” an “investment company,” a “fund,” or a “trust.” All marketing materials that describe the method of obtaining, buying or selling Creation Units, or Shares traded on the Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem those Shares from the Index Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Index Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

¹⁰ As a general matter, the Deposit Securities and Fund Securities will correspond *pro rata* to the Portfolio Securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities, which are deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act; under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. 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 provisions of section 12(d)(1) if the exemption is consistent with the public interest and protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is

entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue individual Shares of each Index Fund that are redeemable in Creation Units only.

Applicants state that investors may purchase or redeem Creation Units from an Index Fund.

Applicants further state that the price at which Shares trade should be disciplined by arbitrage opportunities created by the option to purchase or redeem continually Shares in Creation Units, which should help ensure that Shares will not trade at a material discount or premium in relation to their NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place on the basis of current bid/offer prices and not at an offering price described in the Index Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been

intended to: (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (b) prevent unjust discrimination or preferential treatment among buyers; and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and paying investors a little more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market transactions in Shares will not cause dilution for owners of such Shares because such transactions do not directly involve Index Fund assets. In addition, secondary market trading in Shares should not create discrimination or preferential treatment among buyers because any variances occurring in prices of the Shares during a given trading day, or from day to day, will be the result of third-party market forces, such as supply and demand. Finally, applicants contend that the proposed distribution system will be orderly because competitive marketplace forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.¹¹

¹¹ Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Shares from the Trust or an underwriter. Applicants further state that the Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from an Index Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply

8. Applicants state that Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without prospectuses. Applicants contend that Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information will be published daily in the financial section of newspapers. The Trust intends to maintain a website that will include the Prospectus and SAI, the relevant Underlying Index for each Index Fund, and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price and the NAV for each Index Fund and information about the premiums and discounts at which the Index Fund's Shares have traded.

9. Applicants will arrange for broker-dealers selling Shares in the secondary market to provide purchasers with a product description ("Product Description") that describes, in plain English, the relevant Index Fund and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product

of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Index Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Index Fund's Prospectus will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies ("Investing Management Companies") and unit investment trusts ("Investing Trusts", collectively with Investing Management Companies, "Investing Funds") registered under the Act that are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Trust, to acquire shares of an Index Fund beyond the limits of sections 12(d)(1)(A) and (B). Investing Funds exclude registered investment companies that are, or in the future may be, part of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act as the Index Funds. In addition, Applicants request an order that would permit the Distributor and any brokers or dealers ("Brokers") that are registered under the Exchange Act to knowingly sell shares of the Index Fund to an Investing Fund in excess of

the limits of section 12(b)(1)(B). Applicants request that the relief sought apply to: (a) Index Funds that are advised by the Adviser and in the same group of investment companies as the Trust; (b) each Investing Fund that enters into a participation agreement with the Index Fund (the “Participation Agreement”); and (c) any Broker.¹²

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the “Investing Fund Adviser”) and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an “Investing Fund SubAdviser”). Any Investing Fund Adviser or Investing Fund SubAdviser will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (“Sponsor”).

13. Applicants submit that the proposed conditions to the relief requested adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act, which include concerns about large scale redemptions of the acquired fund’s shares, excessive layering of fees, and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither the Investing Funds nor Investing Fund Affiliates would be able to exert undue influence over the Index Funds.¹³ To limit the control that an Investing Fund may have over an Index Fund, applicants propose a condition prohibiting the Investing Fund Adviser or Sponsor, any person controlling, controlled by, or under common

¹² All parties that currently intend to rely on the requested relief from section 12(d)(1) are named as Applicants. Other parties that may rely on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in the Index Funds and any Future Index Funds and not in any other registered investment company.

¹³ An “Investing Fund Affiliate” is an Investing Fund Adviser, Investing Fund SubAdviser, Sponsor, promoter, or principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. An “Index Fund Affiliate” is an investment adviser, promoter, or principal underwriter of an Index Fund, and any person controlling, controlled by, or under common control with any of those entities.

control with the Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (“Investing Fund’s Advisory Group”) from controlling (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund SubAdviser, any person controlling, controlled by or under common control with the Investing Fund SubAdviser, 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 Investing Fund SubAdviser or any person controlling, controlled by or under common control with the Investing Fund SubAdviser (“SubAdviser Group”).

Applicants propose other conditions to limit the potential for undue influence over the Index Funds, including that no Investing Funds or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund SubAdviser, Sponsor, or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund SubAdviser, Sponsor or employee is an affiliated person. An Underwriting Affiliate does not include a person whose relationship to an Index Fund is covered by section 10(f) of the Act.

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not “interested persons” (within the meaning of section 2(a)(19) of the Act), will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. Except as provided in condition 11, an Investing Fund Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b-1 under the Act) received by the Investing Fund Adviser or trustee or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor from the Index Funds in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Applicants state that any sales loads or service fees charged with respect to shares of the Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers, Inc. (“NASD”).

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Index 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 permitted by exemptive relief from the Commission that allows the Index Fund to purchase shares of a money market fund for short-term cash management purposes. To ensure that Investing Funds comply with the

terms and conditions of the requested relief from section 12(d)(1) of the Act, a Participation Agreement will be entered into between the Index Fund and the Investing Fund. The Participation Agreement will require the Investing Fund to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the requested order only to invest in the Index Funds and not in any other registered investment company. Applicants represent that each Investing Fund will represent in the Participation Agreement that if it exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) and (iii) of the Act, it will disclose in its prospectus that it may invest in the Index Funds, and disclose in “plain English” in its prospectus the unique characteristics of doing so, including but not limited to, the expense structure and any additional expenses of investing in the Index Funds. Each Investing Fund will also be required to represent in the Participation Agreement that it will comply with the disclosure requirements set forth in Investment Company Act Release No. 27399 (June 20, 2006).

17. Applicants also note that an Index Fund may choose to reject a direct purchase by an Investing Fund. To the extent that an Investing Fund purchases Shares in the secondary market, the Index Fund would still retain its ability to reject purchases of Shares made in reliance on this order by declining to enter into the Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A).

Section 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or affiliated persons of affiliated persons (“Second-Tier Affiliate”) from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include (a) any person directly or indirectly owning, controlling or

holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act further states that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. In addition, the Index Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. The Index Funds also may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an "Affiliated Fund"). Applicants state that if Creation Units of all of the Index Funds or of one or more particular Index Funds are held by twenty or fewer investors, including an Exchange Specialist or Market Maker, some or all of such investors will be 5% owners of the Trust or such Index Funds, and one or more investors may hold in excess of 25% of the Trust or such Index Funds. Such investors would be deemed to be affiliated persons of the Trust or such Index Funds.

19. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons that are affiliated persons or Second-Tier Affiliates of the Index Funds solely by virtue of: (a) holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Index Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the Shares of one or more Affiliated Funds, to effectuate in-kind purchases and redemptions. Applicants further request exemptive relief pursuant to sections 6(c) and 17(b) of the Act to

permit an Index Fund, 5% or more of whose Shares are held by an Investing Fund prior to a particular purchase or redemption transaction, to sell its Shares to and redeem its Shares from an Investing Fund.

20. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from making in-kind purchases or in-kind redemptions of Shares of an Index Fund in Creation Units. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be effected in exactly the same manner. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and in-kind redemptions will afford no opportunity for the affiliated persons of an Index Fund, or the Second-Tier Affiliates, to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Index Fund.

21. Applicants also seek relief from section 17(a) of the Act for any transaction in Creation Units directly between an Index Fund and any Investing Fund that owns 5% or more of an Index Fund prior to such transaction.¹⁴ Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of Shares directly from an Index Fund will be based on the NAV of the Index Fund.¹⁵ Applicants state that the proposed transactions will be consistent with the policies of each Index Fund and Investing Fund and with the general

¹⁴ Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of an Index Fund or (b) an affiliated person of an Index Fund, or an affiliated person of such person, for the sale by the Index Fund of its Shares to an Investing Fund may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgment.

¹⁵ To the extent that purchases and sales of shares of an Index Fund occur in the secondary market and not through principal transactions directly between an Investing Fund and an Index Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by an Index Fund to an Investing Fund and redemptions of those Shares.

purposes of the Act. The Participation Agreement will require any Investing Fund that purchases Creation Units directly from an Index Fund to represent that purchases of Creation Units from an Index Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

Applicants' Conditions:

Applicants agree that any order of the Commission granting the requested relief to permit the operations of the Index Funds will be subject to the following conditions:

1. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Index Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in an Index Fund beyond the limits of Section 12(d)(1) of the Act, subject to certain terms and conditions, including that the registered investment company enter into a Participation Agreement with the Trust regarding the terms of the investment.

2. As long as the Trust operates in reliance on the requested order, the Shares will be listed on an Exchange.

3. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not

individually redeemable, and that owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

4. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Index Fund: (i) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the website for the Trust has information about the premiums and discounts at which the Shares have traded.

5. The Prospectus and annual report for each Index Fund also will include: (i) the information listed in condition 4(ii), (a) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (b) in the case of the annual report, for the immediately preceding five years, as applicable; and (ii) the following data, calculated on a per Share basis for one, five and ten year periods (or the life of the Index Fund): (a) the cumulative total return and the average annual total return based on NAV and closing price, and (b) the cumulative total return of the relevant Underlying Index.

6. Before an Index Fund may rely on this order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

The Applicants agree that any order of the Commission granting the requested relief from section 12(d)(1) will be subject to the following conditions:

7. The members of an Investing Fund's Advisory Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The members of the SubAdviser Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Index Fund, an Investing Fund's Advisory Group or the SubAdviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Index Fund, it will vote its shares of the Index Fund in the same proportion as the vote of all other holders of the Index Fund's shares. This condition does not apply to the SubAdviser Group with respect to an Index Fund for which the Investing Fund SubAdviser or a person controlling, controlled by, or under common control with the Investing Fund SubAdviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in an Index Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the Index Fund or Index Fund Affiliate.

9. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund's Adviser and any Investing Fund SubAdviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an Index Fund or an Index Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Investing Fund in the securities of an Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Trust's Board of Trustees ("Board"), including a majority of the disinterested Board members, will determine that any consideration paid by an Index Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Index Fund; (ii) is within the range of consideration that the Index Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) 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 Index Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

11. An Investing Fund Adviser, or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b-1 under the Act) received from an Index Fund by the Investing Fund Adviser, trustee, or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, trustee or Sponsor or an affiliated person of the Investing Fund Adviser, trustee or Sponsor by the Index Fund, in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Any Investing Fund SubAdviser will waive fees otherwise payable to the Investing Fund SubAdviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Index Fund by the Investing Fund SubAdviser, or an affiliated person of the Investing Fund

SubAdviser, other than any advisory fees paid to the Investing Fund SubAdviser or its affiliated person by the Index Fund, in connection with the investment by the Investing Management Company in the Index Fund made at the direction of the Investing Fund SubAdviser. In the event that the Investing Fund SubAdviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

12. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in any Affiliated Underwriting.

13. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Index Fund in an Affiliated Underwriting once an investment by an Investing Fund in Shares of the Index Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Index Fund. The Board will consider, among other things:

(i) whether the purchases were consistent with the investment objectives and policies of the Index Fund; (ii) 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 (iii) whether the amount of securities purchased by the Index Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to

assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

14. Each Index Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than 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 Affiliated Underwritings once an investment by an Investing Fund in the securities of the Index Fund exceeds the limits in 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 Board's determinations were made.

15. Before investing in an Index Fund in excess of the limits in section 12(d)(1)(A), the Investing Fund and the Index Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, and the trustee and Sponsor of an Investing Trust, as applicable, 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 Index Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Index Fund of the investment. At such time, the Investing Fund will also transmit to the Index Fund a list of names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Index Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Index Fund and the Investing Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any

updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

16. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

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

18. No Index Fund will acquire securities of any investment company or company relying on sections 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 permitted by exemptive relief from the Commission that allows the Index Fund to purchase shares of a money market fund for short-term cash management purposes.

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

Florence E. Harmon
Deputy Secretary