

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC - 27740; 812-13345]

NASDAQ-100 Trust, Series 1, et al.; Notice of Application

February 27, 2007

Agency: Securities and Exchange Commission (“Commission”)

Action: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 4(2), 22(d), 24(d) and 26(a)(2)(C) 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 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

Summary of Application: Applicants request an order to permit (a) Nasdaq-100 Trust, Series 1 (“Trust”), a unit investment trust whose portfolio consists of the component stocks of the Nasdaq-100 Index (“Index”), to issue shares (“Nasdaq-100 Shares”) that are only redeemable in large aggregations; (b) secondary market transactions in Nasdaq-100 Shares to occur at negotiated prices; (c) dealers to sell Nasdaq-100 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) the Trust, rather than the Sponsor (defined below), to bear certain expenses associated with the maintenance of the Trust; (e) certain “affiliated persons” of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of Nasdaq-100 Shares; and (f) the Trust to reimburse the Sponsor for payment of an annual licensing fee to The Nasdaq Stock Market, Inc. (“Nasdaq”).

Applicants: The Trust, PowerShares Capital Management LLC (“PowerShares,” together with its successor in interest¹ and with any person, directly or indirectly, controlling, controlled by, or under common control with, PowerShares, “Sponsor”), and ALPS Distributors, Inc. (“Distributor”).

Filing Dates: The application was filed on November 20, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief 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 March 19, 2007, 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: H. Bruce Bond, PowerShares Capital Management LLC, 301 West Roosevelt Road, Wheaton, IL 60187.

For Further Information Contact: Jaea F. Hahn, Senior Counsel, at (202) 551-6870, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

¹ “Successors in interest” means any entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

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

Applicants' Representations:

1. The Trust is a unit investment trust ("UIT") organized under the laws of the state of New York. The Sponsor is a wholly-owned subsidiary of AIM Management Group Inc.² The Bank of New York acts as trustee to the Trust ("Trustee") pursuant to a trust agreement entered into by and between the Trustee and the Initial Sponsor of the Trust, as amended (the "Trust Agreement").³ The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and serves, on an agency basis, as principal underwriter of the Trust.

2. The Trust holds a portfolio of securities ("Portfolio Securities") consisting of substantially all of the securities in substantially the same weighting as the component securities of the Index (the "Index Securities"). The Index is a "modified capitalization-weighted" index of securities issued by the 100 largest and most actively traded non-financial companies listed on the Nasdaq Global Select Market or the Nasdaq Global Market. The Index was first published in 1985.

² On October 18, 2006, PowerShares entered into a Transaction Agreement ("Transaction Agreement") with Nasdaq, the parent of Nasdaq Global Funds, Inc. (formerly named Nasdaq AMEX Investment Product Services, Inc., and later renamed Nasdaq Financial Product Services, Inc., the "Initial Sponsor") pursuant to which the Initial Sponsor will transfer sponsorship of the Trust to PowerShares. In connection with the Transaction Agreement, PowerShares is seeking exemptive relief substantially identical to the relief granted to the Trust pursuant to a Commission order (Investment Company Act Release No. 25795 (Feb. 22, 1999), as amended by Investment Company Act Release No. 26415 (Apr. 9, 2004)). The transfer of sponsorship of the Trust from the Initial Sponsor to PowerShares is contingent upon receipt of the exemptive relief requested in the application.

³ If the relief requested herein is granted, the Initial Sponsor will assign its duties under the Trust Agreement to PowerShares.

3. Nasdaq-100 Shares, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the Index, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Portfolio Securities.⁴ Applicants believe that Nasdaq-100 Shares afford significant benefits in the public interest. Applicants state that the Trust is able to track the Index more closely than certain other index products and, unlike shares of open-end index funds, Nasdaq-100 Shares trade at negotiated prices throughout the Business Day.⁵ Applicants also state that Nasdaq-100 Shares attract investors and foreign capital to the U.S. markets.

4. The Trustee adjusts the composition of the Portfolio Securities from time to time to reflect changes made by Nasdaq to the composition and weighting of the Index Securities.⁶ All adjustments to the Portfolio Securities are made by the Trustee as forth in the Trust Agreement and are non-discretionary.

5. The Trustee is paid a “Trustee’s Fee” at an annual rate of 0.04% to 0.10% of the net asset value (“NAV”) of the Trust, with the minimum fee amount not to fall below \$180,000.⁷ Until the Sponsor otherwise determines, the Sponsor has undertaken that the ordinary operating expenses of the Trust as calculated by the Trustee will not be permitted to exceed an amount

⁴ The Trust makes quarterly distributions of an amount representing the dividends accumulated on Portfolio Securities during each quarter, net of fees and expenses, if any.

⁵ A “Business Day” is any day that the Nasdaq or any other exchange that lists Nasdaq-100 Shares is open for business and any day that the Trust is open for business as required by section 22(e) of the Act.

⁶ Nasdaq determines, comprises, and calculates the Index without regard to the Trust.

⁷ If the amount of the Trustee’s compensation is less than the minimum annual fee, the Sponsor will pay the amount of the shortfall.

which is 20/100 of one percent (0.20%) per annum of the daily NAV of the Trust.⁸ The Sponsor retains the ability to be repaid by the Trust to the extent that subsequently during the fiscal year expenses fall below the 0.20% per year level on any given day. Trust fees and expenses are first paid out of income received by the Trust in the form of dividends and other distributions on the Portfolio Securities.⁹

6. The Sponsor will be granted a license to use the Index as a basis for determining the composition of the Trust and to use certain trademarks of Nasdaq in connection with the Trust. The Sponsor will pay Nasdaq an annual licensing fee for the Index and will seek reimbursement from the Trust for the fee charged in connection with its Index. The Sponsor will pay the Distributor a flat annual fee for services provided to the Trust. The Sponsor will not seek reimbursement from the Trust for such payment without first obtaining prior exemptive relief from the Commission.

7. Nasdaq-100 Shares are issued in aggregations of 50,000 shares (“Creation Units”). The price of one Portfolio Deposit (defined below), exclusive of brokerage costs, was approximately \$2,032,500 (based on the market value of the Index) on September 30, 2006. All orders to purchase Creation Units must be delivered through a party that has executed a Nasdaq-100 participation agreement with the Distributor and Trustee and is either (i) a participant in the Continuous Net Settlement (“CNS”) System of the National Securities Clearing Corporation

⁸ For purposes of this undertaking, “ordinary operating expenses” will not include taxes, brokerage commissions and extraordinary non-recurring expenses.

⁹ In circumstances where the Trust’s income is insufficient to pay the fees and expenses of the Trust, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

(“NSCC”) (“Nasdaq-100 Clearing Process”) or (ii) a Depository Trust Company (“DTC”) participant.

8. An investor wishing to purchase a Creation Unit from the Trust has to transfer to the Trustee a “Portfolio Deposit” consisting of: (i) a portfolio of securities substantially similar in composition and weighting to the Index Securities (“Deposit Securities”);¹⁰ (ii) a cash payment equal to the dividends accrued on the Portfolio Securities since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (“Income Net of Expense Amount”); and (iii) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis (the “Balancing Amount”).¹¹ The Balancing Amount and the Income Net of Expense Amount together constitute the “Cash Component.” An investor making a Portfolio Deposit will be charged a service fee (“Transaction Fee”), paid to the Trustee, to defray the Trustee’s costs in processing securities deposited into the Trust.¹² The Sponsor makes available each Business Day a list of the names

¹⁰ The Trust will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with redemption securities (“Redemption Securities”), including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933. The specified Deposit Securities and Redemption Securities generally will correspond pro rata to the Portfolio Securities.

¹¹ At the close of the market on each Business Day, the Trustee calculates the NAV of the Trust and then divides the NAV by the number of outstanding Nasdaq-100 Shares in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee then calculates the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the following Business Day.

¹² The Transaction Fee is (i) \$500 per “Participating Party” (defined below) per day for creations of Creation Units where there are also, in the same day, separate creations in any number, or redemptions in an amount not equal to the number of Nasdaq-100 Shares created, of other similar exchange-traded funds based on the Index for which the Trustee or its affiliate acts as trustee, fund administrator or in any similar capacity, (ii) no fee per Participating Party where there is, in the same day, a redemption of an equal number of shares of another similar exchange-traded fund based on the Index, for which the Trustee or its affiliate acts as the Trustee, fund administrator or in a similar capacity, and (iii) in all other cases \$1,000 per day, regardless of the number of Creation Units purchased on that day by such Participating Party. The Transaction Fee may be

and the required number of shares for each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount effective through and including the previous Business Day, per outstanding Nasdaq-100 Share.¹³

9. Orders to purchase Creation Units are placed with the Distributor, who is responsible for transmitting the orders to the Trustee. The Distributor issues confirmations of acceptance, transmits delivery instructions to the Trustee to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also is responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

10. Persons purchasing Creation Units from the Trust may hold the Nasdaq-100 Shares or sell some or all of them in the secondary market. Nasdaq-100 Shares are listed on the Nasdaq Global Select Market and the Nasdaq Global Market, each part of Nasdaq, and traded in the secondary market as individual units (i.e., in less than Creation Units) in the same manner as other equity securities. One or more member firms of Nasdaq will act as market makers

changed by the Trustee with the Sponsor's consent, but it will not exceed 0.10% of the value of a Creation Unit. For purchases of Creation Units outside the Nasdaq-100 Clearing Process, the Transaction Fee will be one to four times greater. The amount of the Transaction Fee will be disclosed in the prospectus for the Trust. A "Participating Party" is a broker-dealer or other NSCC participant who is a participating party in the Nasdaq-100 Clearing Process.

¹³ The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its "restricted list").

(“Market Makers”) and maintain a market for Nasdaq-100 shares.¹⁴ Transactions involving the sale of Nasdaq-100 Shares are subject to customary brokerage commissions and charges. Applicants state that the price at which Nasdaq-100 Shares trade is disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that Nasdaq-100 Shares do not trade at a material discount or premium in relation to their NAV.

11. Applicants state that purchasers of Creation Units include institutional investors and arbitrageurs (which could include institutional investors). A Market Maker also may purchase Creation Units for use in market making activities. Applicants also state that secondary market purchasers of Nasdaq-100 Shares include both institutional and retail investors.¹⁵

12. Applicants will make available a standard product description for Nasdaq-100 Shares (“Product Description”) to Nasdaq members and member organizations for distribution to investors purchasing Nasdaq-100 Shares in accordance with Nasdaq rules. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of Nasdaq-100 Shares. The Product Description also advises investors that a prospectus for Nasdaq-100 Shares is available without charge upon request from the investor's account executive. Applicants state that purchases of Nasdaq-100 Shares through a non-member broker-

¹⁴ No particular Market Maker is contractually obligated to make a market in Nasdaq-100 Shares although Nasdaq’s listing requirements stipulate that at least two Market Makers must be registered in Nasdaq-100 Shares to maintain the listing. Applicants do not expect that any Market Maker will be an affiliated person, or an affiliated person of an affiliated person of the Trust, within the meaning of section 2(a)(3) of the Act, except pursuant to section 2(a)(3)(A) or (C) of the Act due to ownership of Nasdaq-100 Shares, as described below.

¹⁵ Nasdaq-100 Shares are registered in book-entry form only. DTC or its nominee is the registered owner of all outstanding Nasdaq-100 Shares. Records reflecting the beneficial owners of Nasdaq-100 Shares are maintained by DTC or its participants.

dealer in a transaction away from the Nasdaq do not constitute a significant portion of the market activity in Nasdaq-100 Shares.

13. Nasdaq-100 Shares are not individually redeemable, except upon termination of the Trust. Nasdaq-100 Shares are only redeemable in Creation Units through the Trust. To redeem, an investor has to accumulate enough Nasdaq-100 Shares to constitute a Creation Unit. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of an Index Security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust; (ii) upon the request of the redeeming investor; or (iii) upon notice of the termination of the Trust. A redeeming investor may receive or may pay an amount equal to the Income Net of Expense Amount, plus or minus the Balancing Amount. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit. The Trustee will transfer the securities and cash to the redeeming investor within three Business Days of receipt of the request for redemption.

14. Because the Trust ordinarily redeems Creation Units in kind, the Trust does not have to maintain cash reserves for redemptions. This allows the assets of the Trust to be committed as fully as possible to tracking the Index, enabling the Trust to track the Index more closely than other investment products that must allocate a greater portion of their assets for cash redemptions.

15. The Trust will terminate on the earlier of (i) March 4, 2124, or (ii) the date 20 years after the death of the last survivor of fifteen persons named in the trust agreement, the

oldest of whom was born in 1986 and the youngest of whom was born in 1996. The Trust will also terminate if (i) Nasdaq-100 Shares are de-listed from the Nasdaq and are not subsequently re-listed on a national securities exchange registered under the Exchange Act; or (ii) either the Sponsor or the Trustee resigns or is removed, and a successor is not appointed. The Trust may terminate if: (i) 66- 2/3% of the holders of the outstanding Nasdaq-100 Shares agree to terminate it; (ii) the DTC is unable or unwilling to continue to perform its functions and a suitable replacement is unavailable; (iii) NSCC no longer provides clearance services with respect to the Nasdaq-100 Shares, or if the Trustee is no longer a participant in NSCC; (iv) Nasdaq ceases to publish the Index; or (v) the license agreement is terminated.

16. Within a reasonable time after the Trust's termination, the Trustee will use its best efforts to sell all Portfolio Securities not previously distributed to investors redeeming Creation Units. Nasdaq-100 Shares not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of the Portfolio Securities.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 4(2), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1 under the Act; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

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, 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.

Sections 4(2) and 2(a)(32) of the Act

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. The term “redeemable security” is defined in section 2(a)(32) of the Act 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 a proportionate share of the issuer’s current net assets or the cash equivalent. Because Nasdaq-100 Shares are not individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT and issue Nasdaq-100 Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Nasdaq-100 Shares in Creation Units from the Trust and redeem Creation Units. Applicants further state that because the market price of Creation Units is disciplined by arbitrage opportunities, investors should be able to sell Nasdaq-100 Shares in the secondary market at approximately 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 that is being currently offered to the public by or through an 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 next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in Nasdaq-100 Shares takes place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Nasdaq-100 Shares in the secondary market do not comply with section 22(d) and rule 22c-1. Applicants request an exemption 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 method of pricing Nasdaq-100 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 designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices; and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes are thwarted by permitting Nasdaq-100 Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Nasdaq-100 Shares does not involve the Trust as a party and cannot result in dilution of an investment in Nasdaq-100 Shares; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Nasdaq-100 Shares do not create discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system is orderly because arbitrage activity ensures that the difference between the market price of Nasdaq-100 Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in pertinent 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 a UIT. Applicants request an exemption from section 24(d) to permit dealers in Nasdaq-100 Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.¹⁶ Applicants state that the imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of Nasdaq-100 Shares.

8. Applicants state that the secondary market for Nasdaq-100 Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. Nasdaq-100 Shares are listed on a national securities exchange and trade in the same manner as listed securities issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Nasdaq-100 Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Nasdaq-100 Shares are exchange-listed, prospective investors have access to several types of market information about them. Applicants

¹⁶ Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, 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 takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Nasdaq-100 Shares, and sells Nasdaq-100 Shares directly to its customers; or if it chooses to couple the creation of a supply of new Nasdaq-100 Shares with an active selling effort involving solicitation of secondary market demand for Nasdaq-100 Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Nasdaq-100 Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

state that quotations, last sale price, and volume information are continually available on a real time basis through the consolidated tape and are available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information is also published in the financial section of newspapers. The Sponsor also publishes daily, on a per Nasdaq-100 Share basis, the amount of accumulated dividends, net of accrued expenses.

10. Investors also receive Product Descriptions. Applicants state that, while not intended as a substitute for a prospectus, the Product Description contains pertinent information about Nasdaq-100 Shares. Applicants also note that Nasdaq-100 Shares are readily understandable to retail investors as a product that tracks the Nasdaq-100 Index, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

11. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

12. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C) of the Act-- "double dipping" by UIT sponsors collecting money from their captive trusts in addition to the profits

already generated by sales charges and other sources--will not be present if the requested exemption is granted.

13. Applicants contend that permitting the Trust to reimburse the Sponsor for certain expenses would be no more disadvantageous to the holders of Nasdaq-100 Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that the Trust pays the Sponsor only its actual out-of-pocket expenses and no component of profit is included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

Section 17(a) of the Act

14. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Section 2(a)(3) defines "affiliated person" to include 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, and any person controlling, controlled by or under common control with the other person. Section 2(a)(9) provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that, because the definition of "affiliated person" includes any person owning 5% or more, or more than 25%, of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be an affiliated person of the Trust so long as 20 or fewer Creation Units are in existence. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit persons that are affiliated persons solely by virtue of a 5% or more, or more than 25%, ownership interest in the Trust (or affiliated persons of such person that

are not otherwise affiliated with the Trust) to purchase and redeem Creation Units through in-kind transactions.

15. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) 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, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming investor is the same regardless of the investor's identity, and is valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of Nasdaq-100 Shares. Applicants also believe that "in kind" purchases and redemptions do not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Section 17(d) of the Act and Rule 17d-1 Under the Act

16. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d-1, in passing upon such applications, the Commission considers whether the participation of the registered

investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

17. Applicants request an order under rule 17d-1 that would permit the Trust to reimburse the Sponsor for the payment to Nasdaq of an annual license fee under a license agreement. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d-1.

18. The license agreement allows applicants to use the Index as a basis for Nasdaq-100 Shares and to use certain of Nasdaq's trade name and trademark rights. Applicants believe that Nasdaq is a valuable name that is well-known to investors and that investors will desire to invest in an instrument that closely mirrors the Index. In view of this, applicants state that it is necessary to obtain from Nasdaq the above-mentioned license agreement so that appropriate reference to Nasdaq and Nasdaq-100 Shares may be made in materials describing Nasdaq-100 Shares and the Trust. Applicants assert that the terms and provisions of the license agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value and is in an amount comparable to that which would be charged by Nasdaq for similar arrangements. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d-1.

Applicants' Conditions:

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

1. Applicants will not register a new series of the Trust by means of filing a post-

effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust' prospectus and the Product Description clearly disclose that, for purposes of the Act, Nasdaq-100 Shares are issued by the Trust and that the acquisition of Nasdaq-100 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 the Trust beyond the limits of Section 12(d)(1)(A), subject to certain terms and conditions, including that the investment company enter into an agreement with the Trust regarding the terms of the investment.

3. As long as the Trust operates in reliance on the requested order, the Nasdaq-100 Shares will be listed on an Exchange.

4. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Nasdaq-100 Share basis, for the Trust: (a) 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 (b) 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 the Trust will state that the website for the Trust has information about premiums and discounts at which the Nasdaq-100 Shares have traded.

5. The prospectus and annual report for the Trust will also include: (a) the information listed in condition 4(b), (i) in the case of the prospectus, for the most recently

completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Nasdaq-100 Share basis for one-, five- and ten-year periods (or life of the Trust), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the Index.

6. Before the Trust may rely on the 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 Nasdaq-100 Shares to deliver a Product Description to purchasers of Nasdaq-100 Shares.

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

Florence E. Harmon
Deputy Secretary