

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27811; 812-13335]

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

April 30, 2007

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), 22(e) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of open-end management investment companies, whose portfolios will consist of the component securities of certain foreign equity securities indexes or fixed income securities indexes, to issue shares (“Fund Shares”) that can be purchased from the investment companies and redeemed only in large aggregations (“Creation Units”); (b) secondary market transactions in Fund Shares to occur at negotiated prices on a national securities exchange; (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the “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) the series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of a Creation Unit for redemption. In addition, the order would delete a condition related to future relief and expand the scope of future relief in a prior order.<sup>1</sup>

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<sup>1</sup> See PowerShares Exchange-Traded Fund Trust, Investment Company Act Release Nos. 25961

Applicants: PowerShares Exchange-Traded Fund Trust (the “Initial Trust”), PowerShares Global Exchange-Traded Fund Trust (the “New Trust,” and together with the Initial Trust, the “Trusts”), PowerShares Capital Management LLC (the “Adviser”), and AIM Distributors, Inc. (the “Distributor”).

Filing Dates: The application was filed on October 19, 2006 and amended on March 29, 2007 and April 26, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is contained in this 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 May 24, 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, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. The Trusts and the Adviser: 301 West Roosevelt Road, Wheaton, IL 60187; the Distributor: 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

For Further Information Contact: Marilyn Mann, Senior Counsel, at (202) 551-6813, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

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(March 4, 2003) (notice) and 25985 (March 28, 2003) (order) (the “Prior Order”).

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 (telephone (202) 551-5850).

Applicants' Representations:

1. The Trusts are open-end management investment companies registered under the Act and organized as Massachusetts business trusts. The Trusts are organized as series funds (each such series, an "Index Fund"). The Initial Trust currently offers and sells certain Index Funds. The Initial Trust intends to offer nine new Index Funds and the New Trust intends to offer 37 new Index Funds (each, a "New Fund"). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") and will serve as the investment adviser to each New Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), will serve as the principal underwriter for each New Fund. The Adviser may in the future retain one or more sub-advisers ("Sub-Advisers") to manage one or more of the New Funds for which it will act as the investment adviser. The Sub-Advisers will be registered under the Advisers Act or will be exempt from such registration.

2. Each New Fund will invest in a portfolio of securities ("Portfolio Securities") generally consisting of the component securities ("Component Securities") of a specified securities index (the "Underlying Indexes"). In the case of the New Funds offered by Initial Trust, the Underlying Indexes will be composed of fixed-income securities (each, a "Fixed Income Index") and in the case of the New Funds offered by the New Trust, the Underlying Indexes will be composed of foreign securities (each, a "Foreign Index"). Each New Fund based

on a Fixed Income Index is referred to as a “Fixed Income Fund.”<sup>2</sup> Each New Fund based on a Foreign Index is a “Foreign Fund.”<sup>3</sup> The board of trustees of each Trust or of additional open-end management investment companies created by the Adviser (“Board”) may establish additional Index Funds in the future (the “Future Funds”) that will be based on other Foreign Indexes or Fixed Income Indexes. Applicants request that the relief requested in the application apply to any such Future Funds. Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order.<sup>4</sup> No entity that creates, compiles, sponsors or maintains an Underlying Index 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 Trusts, the Adviser, the Sub-Adviser, the Distributor, or a promoter of a New Fund.

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<sup>2</sup> The Fixed Income Indexes for the Fixed Income Funds are: DB Emerging Markets USD Liquid Bond Index, Merrill Lynch U.S. Domestic Index, Merrill Lynch Global Inflation-Linked Government Index, Merrill Lynch 1-10 Years U.S. Inflation-Linked Treasury Index, Ryan/Mergent 1-30 Year Laddered Treasury Index, DB U.S. Agency Mortgage TBA Index, Wachovia Global ex-U.S. Bond Index, Wachovia Yield Focused Investment Grade Bond Index, and Wachovia High Yield Bond Index.

<sup>3</sup> The Foreign Indexes for the Foreign Funds are: the FTSE RAFI Developed Markets ex-U.S. 1000 Index, FTSE RAFI Developed Markets ex-U.S. Small Index, FTSE RAFI Emerging Markets Index, FTSE RAFI Europe Index, FTSE RAFI Europe Small Index, FTSE RAFI Latin America Index, FTSE RAFI Asia Pacific ex-Japan Index, FTSE RAFI Asia Pacific ex-Japan Small Index, FTSE RAFI BRIC Index, FTSE RAFI Japan Index, FTSE RAFI Canada Index, FTSE RAFI Germany Index, FTSE RAFI Hong Kong Index, FTSE RAFI Mexico Index, FTSE RAFI South Korea Index, FTSE RAFI Taiwan Index, FTSE RAFI United Kingdom Index, FTSE RAFI China Index, FTSE RAFI Australia Index, FTSE RAFI Brazil Index, FTSE RAFI France Index, FTSE RAFI South Africa Index, Indus India Index, WilderHill New Energy Global Innovation Index, International Listed Private Equity Index, Palisades Global Water Index, QSG Developed International Opportunities Index, QSG Developed International Value Index, QSG Developed International Growth Index, QSG Active Japan Index, QSG Asia-Pacific Opportunities Index, QSG Active Europe Index, QSG Active Australia Index, QSG Active Canada Index, QSG Active France Index, QSG Active Germany Index, and QSG Active UK Index.

<sup>4</sup> All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application.

3. The investment objective of each New Fund will be to provide investment results that generally correspond, before fees and expenses, to the total return of the relevant Underlying Index. A Foreign Fund will invest at least 90% of its assets in the Component Securities of its Foreign Index and in Depositary Receipts (as defined below) representing such Component Securities. A Foreign Fund may invest up to 10% of its assets in certain stock index futures, stock options, options on stock index futures, and swap contracts, in each case related to its respective Foreign Index and its Component Securities, as well as cash and cash equivalents. Each Fixed Income Fund generally will invest at least 90% of its assets in Component Securities of its respective Fixed Income Index (except with respect to the PowerShares Domestic Aggregate Bond Portfolio and the PowerShares Mortgage-Backed Securities Portfolio, as set forth below). However, each Fixed Income Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in bonds not included in its Fixed Income Index, but which the Adviser or Sub-Adviser believes will help the Fixed Income Fund track its Fixed Income Index.

4. The PowerShares Domestic Aggregate Bond Portfolio will seek to track that portion of the Merrill Lynch U.S. Domestic Index devoted to government mortgage-backed securities (“MBS”) by investing a corresponding percentage of its assets either in MBS included in the index or in to-be-announced (“TBA”) transactions on MBS. The PowerShares Mortgage-Backed Securities Portfolio will invest at least 90% of its assets in MBS included in the DB U.S. Agency Mortgage TBA Index or in TBA transactions on MBS. A “TBA transaction” essentially is a purchase or sale of a pass-through security for future settlement at an agreed-upon date. Applicants state that most mortgage pass-through securities trades are executed as TBA transactions. Applicants state that TBA transactions increase the liquidity and pricing efficiency

of transactions in MBS because they permit similar MBS to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

5. Each Foreign Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy, and each Fixed Income Fund will use a representative sampling strategy. A Foreign Fund using a replication strategy generally will hold most of the Component Securities of the Foreign Index in the same approximate proportions as the Foreign Index, but may not hold all of the securities that comprise the Foreign Index in certain instances. A New Fund using a representative sampling strategy will seek to hold a representative sample of the Component Securities of the Underlying Index and will invest in some but not all of the Component Securities of its Underlying Index. Applicants anticipate that a New Fund that utilizes a representative sampling strategy will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

6. Any Depositary Receipts held by a Foreign Fund will be negotiable securities that represent ownership of a non-U.S. company's publicly traded stock. Depositary Receipts will typically be American Depositary Receipts ("ADRs"), but may include Global Depositary Receipts ("GDRs") and Euro Depositary Receipts ("EDRs"). ADRs, GDRs and EDRs are collectively referred to herein as "Depositary Receipts." Applicants believe that, in certain cases, holding one or more Depositary Receipts rather than Component Securities of the relevant Foreign Index, will improve the liquidity, tradability and settlement of a Foreign Fund's then current Fund Deposit (as defined below) (thereby improving the efficiency of the creation and

redemption process and facilitating efficient arbitrage activity), while at the same time permitting a Foreign Fund to maintain direct exposure to Component Securities of its Foreign Index. Applicants intend that any Foreign Fund would be able to treat Depositary Receipts that represent Component Securities of its Foreign Index as Component Securities for purposes of any requirements that a percentage of a Foreign Fund's portfolio be invested in Component Securities of its Foreign Index.

7. Creation Units will consist of either 50,000 or 100,000 Shares, as specified in the relevant prospectus ("Prospectus"). The price of a Creation Unit will range from \$1,000,000 to \$5,000,000. Creation Units may be purchased only by or through a party that has entered into an agreement with the Distributor regarding creations and redemptions of Creation Units (an "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, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC") system. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A New Fund also may sell Creation Units on a cash-only basis in limited circumstances.<sup>5</sup> An investor wishing to purchase a Creation Unit

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<sup>5</sup> Over time, the Adviser or Sub-Adviser may conclude that operating on an exclusively in-kind basis for a New Fund may present operational problems for such New Fund. Therefore, each Trust may permit, in its discretion, with respect to a New Fund under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. For example, each of the PowerShares Domestic Aggregate Bond Portfolio and the PowerShares Mortgage-Backed Securities Portfolio will require purchasing investors to substitute cash in lieu of any Deposit Security that is a mortgage TBA transaction. This cash in lieu of mortgage TBAs will likely result in cash-only creations with respect to the PowerShares Mortgage-Backed Securities Portfolio. More generally, substitution might be permitted or required because one or more Deposit Securities may be unavailable, may not be available in the quantity needed to make a Portfolio Deposit, or may not be eligible for trading by an Authorized Participant (or the investor on whose behalf the Authorized Participant is acting). Applicants currently expect that PowerShares FTSE RAFI Taiwan Portfolio, PowerShares FTSE RAFI South Korea Portfolio, PowerShares FTSE RAFI Brazil Portfolio, PowerShares FTSE RAFI

from a New Fund will have to transfer to the New Fund a “Fund Deposit” consisting of: (a) a portfolio of securities that has been selected by the Adviser to correspond to the returns on the relevant Underlying Index (“Deposit Securities”), and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value (“NAV”) per Creation Unit (“Cash Component”).<sup>6</sup> An investor purchasing a Creation Unit from a New Fund will be charged a fee (“Transaction Fee”) to prevent the dilution of the interests of the remaining shareholders resulting from the New Fund incurring costs in connection with the purchase of the Creation Units.<sup>7</sup> Each New Fund will disclose the Transaction Fees charged by the New Fund in its Prospectus and the method of calculating the Transaction Fees in its Prospectus or statement of additional information (“SAI”).

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BRIC Portfolio and PowerShares Indus India Portfolio will utilize “cash-only” purchases and redemptions of Creation Units due to local exchange restrictions on short sales and/or free delivery of stocks, as well as difficulty associated with borrowing stocks in the applicable markets.

<sup>6</sup> On each business day, prior to the opening of trading on the Exchange (as defined below), the Adviser or Sub-Adviser will make available a list of the names and the required number of shares of each Deposit Security required for the Fund Deposit for each New Fund. That Fund Deposit will apply to all purchases of Creation Units until a new Fund Deposit for a New Fund is announced. Each New Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities in certain circumstances. With respect to the Foreign Funds, the Exchange or other market information provider will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing on a per share basis the sum of the current value of the Deposit Securities and the estimated Cash Component. As the respective international local markets close, the market value of the Deposit Securities will continue to be updated for foreign exchange rates for the remainder of the U.S. trading day at the prescribed 15 second interval. With respect to the Fixed Income Funds, the Exchange or other market information provider will disseminate a calculation of the approximate NAV of a Fund Share (the “Intra-day Indicative Value” or “IIV”) every 15 seconds throughout the trading day, separately from the consolidated tape.

<sup>7</sup> When a New Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

8. Orders to purchase Creation Units of a New Fund will be placed with the Distributor who will be responsible for transmitting each order to each New Fund. The Distributor will issue, and maintain records of, confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trusts (to implement the delivery of Creation Units). The Distributor will also be responsible for delivering Prospectuses to purchasers of Creation Units.

9. Persons purchasing Creation Units from a New Fund may hold the Fund Shares or sell some or all of them in the secondary market. Shares of the New Funds will be listed on a national securities exchange, as defined in section 2(a)(26) of the Act (an “Exchange”), and traded in the secondary market in the same manner as other equity securities. An Exchange specialist (“Specialist”) will be assigned to make a market in Shares. If The NASDAQ Stock 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 Fund Shares trading on NASDAQ. The price of Fund Shares traded on an Exchange will be based on a current bid/offer market. Each Fund Share is currently expected to have a market value of between \$20 and \$50. Transactions involving the sale of Fund Shares in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Specialist or Market Maker, in providing for a fair and orderly secondary market for Fund Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional and retail investors.<sup>8</sup> Applicants expect

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<sup>8</sup> Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or its participants will maintain records reflecting the beneficial owners of Fund Shares.

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

11. Fund Shares will not be individually redeemable. Fund Shares will only be redeemable in Creation Units through a New Fund. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (a) the Portfolio Securities designated to be delivered for Creation Unit redemptions on the date the request for redemption is made (“Fund Securities”),<sup>9</sup> which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (b) a “Cash Redemption Payment,” consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on a given day. An investor may receive the cash equivalent of a Fund Security upon its request if, for example, the investor were constrained from effecting transactions in the Fund Security by regulation or policy.

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<sup>9</sup> The New 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. As a general matter, the Deposit Securities and Fund Securities will correspond pro rata to the securities held by the New Funds. In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, each New Fund will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The Prospectus for each New Fund will also state that an Authorized Participant that is not a Qualified Institutional Buyer (“QIB”) will not be able to receive Fund Securities that are restricted securities eligible for resale under rule 144A.

12. A redeeming investor will pay a Transaction Fee to offset transaction costs, whether the redemption proceeds are in kind or cash. When an investor redeems for cash rather than in kind, the investor may pay a higher Transaction Fee. Such Transaction Fee will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.

13. Applicants state that neither the Trusts nor any New Fund will be marketed or otherwise held out as a “mutual fund.” Rather, applicants state that each New Fund will be marketed as an “exchange-traded fund.” No New Fund marketing materials (other than as required in the Prospectus) will refer to a New Fund as an “open-end” or “mutual fund,” except to contrast a New Fund with a conventional open-end management investment company. In all marketing materials where the method of obtaining, buying, or selling Fund Shares is described, applicants will include a statement to the effect that Fund Shares are not redeemable through a New Fund except in Creation Units. The same type of disclosure will be provided in each New Fund’s Prospectus, SAI, advertising materials, and all reports to shareholders. The New Funds will provide copies of their annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Fund Shares.

14. Applicants also seek to amend the Prior Order to modify the terms under which the Initial Trust may offer additional series in the future. The Prior Order is currently subject to a condition that does not permit applicants to register any series by means of filing a post-effective amendment to the Initial Trust’s registration statement or by any other means, unless (a) applicants have requested and received with respect to such series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the series will be listed on a national securities exchange without the need

for filing pursuant to rule 19b-4 under the Exchange Act. The order would amend the Prior Order to delete this condition. In addition, the order would expand the relief under the Prior Order to include registered investment companies other than the Initial Trust. As amended, the Prior Order would permit the introduction of series of the Initial Trust and series of other open-end management investment companies (collectively, “Future Index Funds”) that (a) are advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser; (b) track Underlying Indices comprised of equity securities issued by domestic issuers that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Initial Trust, the New Trust or any sub-advisor or promoter of an Index Fund, and (c) comply with the respective terms and conditions of the Prior Order, as amended by the order.

15. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with section 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Index Funds and the commencement of secondary market trading of such Future Index Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order have been appropriate for the exchange-traded funds advised by the Adviser and would remain appropriate for Future Index Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Index Fund to be listed on an Exchange without the need for a rule 19b-4 filing under the Exchange Act is not necessary to meet the standards under section 6(c) and 17(b) of the Act.

Applicants' Legal Analysis:

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

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 Fund Shares will not be individually redeemable, applicants request an order that would permit each New Fund, as a series of an open-end management investment company, to issue Fund Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Fund Shares in Creation Units from each New Fund and redeem Creation Units. Applicants further state that because the market price of Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary market at prices that do not vary substantially from 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 Fund Shares will take 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 Fund 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 Fund 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 (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) 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 will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares does not involve the New Funds as parties and cannot result in

dilution of an investment in Fund Shares, and (b) 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. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

#### Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Funds to pay redemption proceeds more than seven days after the tender of Fund Shares for redemption. Applicants anticipate that the delivery of redemption proceeds would be made at the latest within 14 calendar days after the redemption request except to the extent that a redemption delivery is delayed due to the proclamation of new or special holidays, the treatment by market participants of certain days as “informal holidays,” the elimination of existing

holidays or changes in local securities delivery practices. At all other times and except as disclosed in the relevant Prospectus, product description (“Product Description”) and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.<sup>10</sup> With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the Prospectus, the Product Description and/or the SAI for each Foreign Fund will disclose those local holidays (over the period of at least one year following the date of the Prospectus, Product Description or SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the New Fund. Applicants are not requesting relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

#### Section 24(d) of the Act

8. 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

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<sup>10</sup> Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

request an exemption from section 24(d) to permit dealers selling Fund Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>11</sup>

9. Applicants state that Fund Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that Fund 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 Fund Shares will be exchange-listed, prospective investors will have access to several types of market information about Fund Shares. 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 closing price and volume information for Fund Shares also will be published daily in the financial section of newspapers. The website maintained for the Trusts will include, for each New Fund, the prior business day's NAV, the mid-point of the bid-ask spread at the time of

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<sup>11</sup> Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in a New Fund's 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 Adviser, breaks them down into the constituent Fund Shares, and sells Fund Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. A New Fund's Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. A New Fund's Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund 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.

calculation of NAV (“Bid/Ask Price”) and calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.<sup>12</sup>

10. Investors also will receive a Product Description describing a New Fund and its Fund Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Fund Shares that is tailored to meet the needs of investors purchasing Fund Shares in the secondary market.

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

11. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (“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 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 directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person’s voting securities. The New 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. In addition, the New Funds 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

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<sup>12</sup> The Bid/Ask Price per Fund Share of a New Fund is determined using the highest bid and the lowest offer on the Exchange at the time of calculation of such New Fund’s NAV.

under common control with the Adviser (an “Affiliated Fund”). Applicants state that because the definition of “affiliated person” includes any person owning 5% or more of an issuer’s outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the New Fund so long as fewer than twenty Creation Units are in existence, and any purchaser that owns more than 25% of a New Fund’s outstanding Fund Shares will be affiliated with a New Fund. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the New Funds solely by virtue of one or more of the following: (1) holding 5% or more, or more than 25%, of the outstanding Fund Shares of either Trust or one or more New Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

12. 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. Applicants contend that no useful purpose would be served by prohibiting affiliated persons or second tier affiliates of a New Fund from purchasing or redeeming Creation Units through “in-kind” transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect

a transaction detrimental to the other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the New Fund.

Applicants' Conditions:

Applicants agree that the Prior Order will continue to be subject to the same conditions, except that condition 1 will be deleted. With respect to the New Funds, applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each New Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, the Fund Shares are issued by a registered investment company, and the acquisition of Fund 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 a New Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the New Fund regarding the terms of the investment.

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

3. Neither the Trusts nor any of the New Funds will be advertised or marketed as an open-end fund or a mutual fund. Each New Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the New Fund and tender those Fund Shares for redemption to such New 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 Fund Shares are not individually redeemable and that owners of Fund Shares may acquire those

Fund Shares from the New Fund and tender those Fund Shares for redemption to the New Fund in Creation Units only.

4. The website maintained for the Trusts, which is and will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each New Fund: (a) the prior business day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each New Fund will state that the website for the New Fund has information about the premiums and discounts at which the Fund Shares have traded.

5. Each New Fund's Prospectus and annual report 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 Fund Share basis for one, five and ten year periods (or life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the applicable Underlying Index.

6. Before a New Fund 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 Fund Shares to deliver a Product Description to purchasers of Fund Shares.

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

Florence E. Harmon  
Deputy Secretary