local CFCs often have identical codes because of the independent assignment process and the limits of the current four-digit code structure. At the same time, OPM has reclaimed all or part of a code series in the past several years to accommodate the ever-expanding list of national/ international federations. Consequently, redundant code assignments can lead to the misdirection of donor funds, as donor choices in giving currently remain limited to the national/international list and to local charities located within the employee's designated duty station campaign.

In recently issued CFC regulations, set forth at 5 CFR Part 950, the OPM Director has the authority, upon implementation of appropriate electronic technology, to remove the restriction that limits donors to contributing only to local charities within their geographic campaign area, based on their official duty station. A first step in implementing electronic technology that would allow donors to contribute to local organizations in other campaign areas is to make sure that each organization has its own unique code. Being able to identify all participating charitable organizations by a unique code will also allow OPM to better monitor compliance with CFC eligibility standards and sanctions compliance requirements. In order to be eligible to participate in the CFC, each charitable organization must be determined to be a tax-exempt public charity under section 501(c)(3) of the Internal Revenue Code. In order to demonstrate compliance with this eligibility standard, each charitable organization must provide a copy of its IRS determination letter. However, many of the IRS determination letters provided by charitable organizations are dated at the time of the initial IRS determination. That determination could have been made many years prior to the current CFC to which the charitable organization is applying for participation. To ensure that each charitable organization meets the 501(c)(3) eligibility standard, OPM will compare the applicant organization against an IRS database to determine that the charitable organization is still recognized as a 501(c)(3) tax-exempt public charity by the IRS. The newly assigned unique codes will assist OPM in identifying each charitable organization against the IRS database. In addition, OPM requires each charitable organization participating in the CFC to complete a certification that it is in compliance with all statutes, Executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). Currently, OPM checks each participating national and international organization against the OFAC list of sanctioned organizations and requests local campaigns to do the same. The newly assigned unique codes will assist OPM in performing this check against the OFAC list for all national, international, and local, organizations participating in the CFC and relieve a burden from the local campaigns.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E6–21904 Filed 12–20–06; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27599; 812–13029]

ProFunds, et al.; Notice of Application

December 14, 2006.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: The order would permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies and unit investment trusts registered under the Act, including those that operate as exchange-traded funds, that are outside the same group of investment companies as the acquiring investment companies.

Applicants: ProFunds, Access One Trust, ProShares Trust (''ETF Trust,'' and together with ProFunds and Access One Trust, the ''Trusts''), ProShare Advisors LLC (''ProShare Advisors''), and ProFund Advisors LLC (''ProFund Advisors,'' and together with ProShare Advisors, the ''Advisers'').

Filing Dates: The application was filed on October 7, 2003, and amended on June 3, 2004, July 15, 2005, and October 6, 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 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 January 8, 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, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Michael W. Mundt, Senior Special Counsel, 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 Trusts are open-end management investment companies registered under the Act and are each comprised of separate series (''Funds'') that pursue distinct investment objectives and strategies. Shares of certain Funds of ProFunds and Access One Trust are sold publicly to retail investors, and shares of other such Funds are sold to insurance company separate accounts funding variable life and variable annuity contracts. The Funds of the ETF Trust (''ETF Funds'') rely on an order from the Commission that allows the ETF Funds to operate as exchange-traded funds and to redeem their shares in large aggregations (''Creation Units'').[1] Certain Funds pursue their investment objectives

[1] ProShares Trust, *et al.*, Investment Company Act Release Nos. 27323 (May 18, 2006) (notice) and 27394 (June 13, 2006) (order) (''ETF Order'').

through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act.[2] ProFund Advisors is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Fund of ProFunds and Access One Trust. ProShare Advisors is registered as an investment adviser under the Advisers Act and serves as investment adviser to each ETF Fund.

2. Applicants request relief to permit registered management investment companies and unit investment trusts registered under the Act that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts (such management investment companies are ''Investing Management Companies,'' such unit investment trusts are ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively ''Funds of Funds''), to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and to permit a Fund, any principal underwriter for a Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) Each open-end management investment company or unit investment trust registered under the Act that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts and is advised or sponsored by the Advisers or any entity controlling, controlled by, or under common control with the Advisers (such open-end management investment companies are ''Open-end Funds,'' such unit investment trusts are ''UIT Funds,'' and both Open-end Funds and UIT Funds are ''Funds''); (2) each Fund of Funds that enters into a Participation Agreement (as defined below) with a Fund to purchase shares of the Funds; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund.[3]

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act and registered as an investment adviser under the Advisers Act or exempt from registration (''Fund of Funds Adviser''). A Fund of Funds Adviser may contract with an investment adviser which meets the definition of section 2(a)(20)(B) of the Act (a ''Subadviser''). Each Investing Trust will have a sponsor (''Sponsor'').

4. Applicants state that the Funds will offer the Funds of Funds simple and efficient investment vehicles to achieve their asset allocation or diversification objectives. Applicants state that the Funds also provide high quality, professional investment program alternatives to Funds of Funds that do not have sufficient assets to operate comparable funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling 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.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Funds of Funds to acquire shares of the Funds in excess of the limits in section 12(d)(1)(A) of the Act, and a Fund, any principal underwriter for a Fund and any Broker to sell shares of a Fund to a Fund of Funds in excess of the limits of section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither the Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over the Funds.[4] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting the Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or 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 Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Subadviser, any person controlling, controlled by or under common control with the 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 Subadviser or any person controlling, controlled by or under common control with the Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a 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

[2] A Fund of Funds (as defined below) may not invest in a Fund that serves as a feeder Fund unless the feeder Fund is part of the same group of investment companies as its corresponding master fund.

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in the Funds and not in any other registered investment company.

[4] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Subadviser, Sponsor, promoter, or principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Advisor, Subadviser, Sponsor, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Subadviser, Sponsor or employee is an affiliated person. An Underwriting Affiliate does not include a person whose relationship to a Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each 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) (''Disinterested Trustees''), will find that the advisory fees charged to the Investing Management Company 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 Open-end Fund in which the Investing Management Company may invest. In addition, a Fund of Funds Advisor, trustee or Sponsor of a Fund of Funds will waive fees otherwise payable to it by the Fund of Funds, as applicable, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Advisor, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor, or its affiliated person by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants also state that with respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD''), if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act, an exemptive order that allows the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act. Applicants also represent that to ensure that the Funds of Funds comply with the terms and conditions of the requested relief from section 12(d)(1) of the Act, a Fund of Funds must enter into a participation agreement between a Trust, on behalf of the relevant Funds, and the Funds of Funds (''Participation Agreement'') before investing in a Fund beyond the limits imposed by section 12(d)(1)(A). The Participation Agreement will require the Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the requested order only to invest in the Funds and not in series of any other registered investment company. The Participation Agreement will further require each Fund of Funds that exceeds the 5% or 10% limitations in sections 12(d)(1)(A)(ii) and (iii) of the Act to disclose in its prospectus that it may invest in the Funds, and to disclose, in ''plain English,'' in its prospectus the unique characteristics of the Fund of Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds. Each Fund of Funds also will comply with the disclosure requirements set forth in Investment Company Act Release No. 27399 (June 20, 2006).

7. Applicants also note that a Fund may choose to reject a direct purchase by a Fund of Funds. To the extent that a Fund of Funds purchases shares of an ETF Fund in the secondary market, the ETF Fund would still retain its ability to reject purchases of its shares through its decision to enter into the Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit a Fund that is an affiliated person of a Fund of Funds because the Fund of Funds holds 5% or more of the Fund's shares to sell its shares to and redeem its shares from a Fund of Funds.[5] Applicants believe that any proposed transactions directly between Funds and Funds of Funds will be consistent with the policies of each Fund and Fund of Funds. The Participation Agreement will require any Fund of Funds that purchases shares from a Fund to represent that the purchase of shares from the Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

[6] To the extent that purchases and sales of shares of an ETF Fund occur in the secondary market and not through principal transactions directly between a Fund of Funds and an ETF 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 ETF Fund to a Fund of Funds and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions, as described in the application for the ETF Order.

reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of shares directly from a Fund will be based on the net asset value of the Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Fund and with the general purposes of the Act.

Applicants' Conditions

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

1. The members of a Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) a 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 a Fund, the Fund of Funds Advisory Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of a Fund, it (except for any member of the Fund of Funds Advisory Group or Subadviser Group that is a separate account) will vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares. This condition does not apply to the Subadviser Group with respect to a Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end Fund) or as the sponsor (in the case of a UIT Fund). A registered separate account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account will either (i) Vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of a Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Fund or a Fund Affiliate.

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

4. Once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Open-end Fund (''Board''), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Open-end Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end Fund; (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Open-end Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Open-end Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Open-end Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Open-end Fund. The Board of the Open-end Fund will consider, among other things, (i) Whether the purchases were consistent with the investment objectives and policies of the Open-end 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 Open-end Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Open-end Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Open-end 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 a Fund of Funds in the securities of the Open-end Fund exceeds the limit 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 determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in section 12(d)(1)(A) of the Act, the Fund of Funds and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or sponsors and trustees, 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 Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Open-end Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of

Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the Disinterested 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 Open-end 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.

10. A Fund of Funds Adviser, or trustee or Sponsor of a Fund of Funds, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee, or Sponsor, or an affiliated person of the Fund of Funds' Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds' Adviser, trustee or Sponsor or its affiliated person, by an Open-end Fund, in connection with the investment by the Fund of Funds in the Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by an Open-end Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. With respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act, an exemptive order that allows a Fund to purchase shares of an affiliated money market fund for short-term cash management purposes or rule 12d1–1 under the Act.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–21780 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54917; File No. SR–NYSE–2006–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to Exchange Rule 638 Concerning Mediation

December 11, 2006.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 22, 2006, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing amendments to Rule 638 concerning mediation. The amendments are, in part, housekeeping in nature as they remove references relating to an expired mediation pilot program and reposition certain provisions of the rule. In addition, the proposed amendments codify certain existing mediation procedures. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Mediation is offered by the Exchange to parties, on a voluntary basis, both before and after an arbitration claim has been filed. A neutral, impartial individual, who serves as the mediator, facilitates discussion of the issues in an attempt to reach a settlement. The mediator does not render a decision.

In 1998, the Exchange adopted, on a pilot basis, Rule 638 to provide for mandatory mediation in all intra-industry disputes and voluntary mediation in all customer disputes for claims of $500,000 or more. As an incentive for parties to use mediation, the pilot program provided for the Exchange to pay the mediator's fee, up to $500 for a single mediation session of up to four hours. In December 2000, the pilot was amended to lower the threshold for customer disputes to $250,000. The Exchange's experience with the pilot led to the conclusion that mediation is most successful when parties enter into it of their own accord. For this reason, the pilot was allowed to expire on January 31, 2003. Thereafter, the Exchange adopted the current mediation rules that provide for voluntary mediation pending arbitration, as well as prior to arbitration.

The proposal would remove references to the expired pilot program. The proposed amendments would also codify certain existing mediation procedures, including that: (1) The

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.