SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28039; 812-13416]

Rafferty Asset Management, et al.; Notice of Application

October 30, 2007

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 registered under the Act, that are outside of the same group of investment companies as the acquiring investment companies.

Applicants: Rafferty Asset Management, LLC ("Rafferty" or "Adviser"), Direxion Funds ("DF") and Direxion Insurance Trust LLC ("DIT," together with DF, the "Trusts").

Filing Dates: The application was filed on August 10, 2007, and amended on October 26, 2007. 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 November 26, 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, 33 Whitehall Street, 10th Floor, New York, NY 10004.

For Further Information Contact: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

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

Applicants' Representations:

1. The 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 Funds of DF are sold publicly to retail investors, and shares of Funds of DIT are sold to insurance company separate accounts funding variable life and variable annuity contracts. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each Fund.[1]

2. Applicants request relief to permit registered management investment companies and their series ("Investing Companies") and registered unit investment trusts and their series ("Investing Trusts," and together with the Investing Companies, "Investing Funds") that are outside

[1] The term "Adviser" includes all entities controlling, controlled by or under common control with Rafferty and its successors in interest. A successor in interest is an entity resulting from a reorganization of Rafferty into another jurisdiction or a change in the type of business organization.

of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts, 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 each Fund to an Investing Fund in excess of the limits of section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (a) other existing and future registered open-end management investment companies and series thereof (included in the term "Funds") advised by the Adviser and in the same group of investment companies, within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts; (b) each Investing Fund that enters into a Participation Agreement (as defined below) with a Fund to purchase shares of the Fund; and (c) any principal underwriter to a Fund or Broker selling shares of a Fund.[2]

3. Each Investing 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 ("Investing Fund Adviser"). An Investing Fund 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") and a trustee ("Trustee"). Applicants represent that to ensure that the Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1) of the Act, an Investing Fund must enter into a participation agreement between a Trust, on behalf of the relevant Funds, and the Investing Fund ("Participation Agreement") before investing in a Fund beyond the limits imposed by section 12(d)(1)(A). The Participation Agreement will require the Investing Funds to adhere to the terms and conditions of

[2] 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. An Investing Fund may rely on the requested order only to invest in the Funds and not in any other registered investment company.

the requested order. The Participation Agreement will include an acknowledgment from an Investing Fund that it may rely on the requested order only to invest in the Funds and not in any other registered investment company.

4. Applicants state that the Funds will offer the Investing 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 Investing Funds that do not have sufficient assets to make comparable investments.

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 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 Investing 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 an Investing Fund 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 Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.[3] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Fund Adviser, Sponsor, and any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, 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 that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor ("Investing Fund 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 each 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 Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a 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 underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Subadviser, Sponsor, or employee of the Investing Fund,

[3] "Investing Fund Affiliates" are the Investing Fund Adviser, Subadviser, Sponsor, promoter, and principal underwriter of the Investing Fund, and any person controlling, controlled by, or under common control with any of these entities. "Fund Affiliates" are the investment adviser(s), promoter, and principal underwriter of the Fund, and any person controlling, controlled by, or under common control with any of these entities.

or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Subadviser, Sponsor or employee is an affiliated person; however any person whose relationship to a Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Investing 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 under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Company may invest. In addition, an Investing Fund Adviser, Sponsor, or Trustee, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, Sponsor or Trustee or an affiliated person thereof, other than any advisory fees paid to the Investing Fund Adviser, Sponsor or Trustee, or an affiliated person thereof by a Fund in connection with the investment by the Investing Fund in the Fund. Applicants also state that with respect to registered separate accounts that invest in any Investing Fund, no sales load will be charged at the Investing Fund 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., ("Rule 2830"), if any, will only be charged at the Investing Fund level or at the Fund level, not both.[4] With respect to other investments in any

[4] Applicants represent that each Investing Fund will represent in the Participation Agreement that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the Investing Fund unless the insurance company has certified to the Investing Fund that the aggregate of all fees and charges associated with each contract that invests in the Investing Fund, including fees and charges at the separate account, Investing Fund, and Fund levels, will be reasonable in

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

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants propose condition 12 to ensure that the proposed structure will not result in unnecessary complexity. Further, the Participation Agreement will require each Investing Fund that exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) and (iii) of the Act to disclose in its prospectus that it may invest in registered investment companies, and to disclose, in "plain English," in its prospectus the unique characteristics of the Investing Fund investing in registered investment companies, including but not limited to the expense structure and any additional expenses of investing in registered investment companies. Each Investing Fund 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 any investment by an Investing Fund. The prospectus of each Fund discloses that the Fund may choose to reject a purchase order at the discretion of the Fund.

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. Applicants seek relief from section 17(a) to permit a Fund that is an

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relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

affiliated person of an Investing Fund because the Investing Fund holds 5% or more of the Fund's shares to sell its shares to and redeem its shares from an Investing Fund.[5]

2. 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 (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, (b) the proposed transaction is consistent with the policies of each registered investment company involved, and (c) 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. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act.

3. Applicants believe that any proposed transactions directly between Funds and the Investing Funds will be consistent with the policies of each Fund and Investing Fund. The Participation Agreement will require any Investing Fund that purchases shares from a Fund to represent that the purchase of shares from the Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.

4. Applicants also state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that all shares of the Funds sold and redeemed by the Funds will be sold and redeemed at net asset value as required by rule 22c-1 under the Act, without

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

regard to the identity of the purchasing or redeeming investor. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund 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 the Investing Fund 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 the 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 Investing Fund 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 Investing Fund 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. 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 (a) vote its shares of the Fund in the same proportion as the vote of all other holders of the Fund's shares, or (b) 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 Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in shares of a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

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

4. Once an investment by an Investing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Fund ("Board"), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Fund to an Investing Fund or an Investing Fund 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 Fund, (b) is within the range of consideration that the 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 a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

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

6. The Board of a Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting once an investment by an Investing Fund 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 Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board of the Fund will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Fund, (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index, and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the 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 Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in

an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the 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 Fund were made.

8. Before investing in a Fund in excess of the limits in section 12(d)(1)(A) of the Act, the Investing Fund and the Fund will execute a Participation Agreement stating without limitation that their boards of directors or trustees and their investment advisers, or the Sponsor and Trustee, 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 a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing 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 Fund in which the Investing Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Company.

10. An Investing Fund Adviser, Sponsor or Trustee, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees from any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Investing Fund Adviser, Sponsor or Trustee, or an affiliated person thereof, other than any advisory fees paid to the Investing Fund Adviser, Sponsor or Trustee, or an affiliated person thereof, by a Fund in connection with the investment by the Investing Fund in the Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Investing Company in an amount at least equal to any compensation received from a Fund by the Subadviser, or an affiliated person thereof, other than any advisory fees paid to the Subadviser or its affiliated person by a Fund, in connection with the investment by the Investing 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 Company.

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

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 or exemptive relief from the Commission permitting the Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

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

Florence E. Harmon
Deputy Secretary