

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29741; 812-13916]

BofA Funds Series Trust, et al.; Notice of Application

August 1, 2011

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

Action: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the “Act”) for an exemption from section 17(a) of the Act.

Applicants: BofA Funds Series Trust (“BAFST” or Trust”), on behalf of its series (the “Funds”, BofA Advisors, LLC (together with any successor, “BAA” or the “Advisor”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (together with any successor, “MLPF&S”) (Trust, Advisor and MLPF&S, the “Applicants”).<sup>1</sup>

Summary of Application: Applicants request an order to permit the Funds to engage in principal transactions in certain taxable money market instruments including repurchase agreements with MLPF&S.

Filing Dates: The application was filed on June 29, 2011.

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 August 23, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for

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<sup>1</sup> Any succession shall be solely by way of change in organization, such as reincorporation or reorganization as a partnership or similar entity. Any entity that currently intends to rely on the requested order is named as an Applicant. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

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 may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: BAFST and BAA, 100 Federal Street, Boston, Massachusetts 02110; MLPFS, Bank of America Tower, One Bryant Park, New York, New York 10036.

For Further Information Contact: Emerson S. Davis, Senior Counsel, (202) 551-6868 or Janet M. Grossnickle, Assistant Director, (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. The Trust, an open-end investment company registered under the Act, is organized as a Delaware statutory trust. The Trust is currently comprised of eleven Funds, each of which is a money market fund subject to rule 2a-7 under the Act ("Rule 2a-7") and permitted to invest in taxable money market instruments, including repurchase agreements. The term "Funds" also includes all future series of the Trust and any or any other registered investment company or series thereof that is advised or sub-advised by the Advisor, and that is permitted to invest in taxable money market instruments, including repurchase agreements ("Future Funds").

2. The BAA serves as the primary investment adviser for the Funds and is a direct wholly owned subsidiary of BofA Global Capital Management Group, LLC, which is wholly owned subsidiary of Bank of America, N.A., which is an indirect wholly owned banking subsidiary of Bank of America Corporation (“BAC”). The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (“Advisers Act”). The term “Advisor” also includes any other existing or future investment adviser registered under the Advisers Act which acts as investment adviser or sub-adviser to a Fund and which controls, is controlled by, or is under common control (as defined in section 2(a)(9) of the Act) with BAA or MLPF&S.

3. MLPF&S, a wholly owned subsidiary of ML&Co., which is a wholly subsidiary of BAC, is a broker-dealer registered under the Securities Exchange Act of 1934, as amended (the “1934 Act”) and a full service investment banking firm.<sup>2</sup> MLPF&S, which is a primary dealer in U.S. Government securities, has grown into one of the largest dealers in commercial paper, repurchase agreements and other taxable money market instruments in the United States. The Applicants believe that MLPF&S’s extensive dealing in taxable money market instruments and repurchase agreements makes it a very significant source for money market investment opportunities as well as related market information and expertise.

4. On December 29, 2008, the Advisor (formerly known as Columbia Management Advisors, LLC), Banc of America Securities, LLC (“BAS”), a broker-dealer that was merged with and into MLPF&S, and predecessor registered investment companies or series thereof to the Funds (“Original Applicants”) received an order of exemption (the “BAS Order”) from the

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<sup>2</sup> MLPF&S is also registered as an investment adviser under the Advisers Act. For purposes of this application, the relief sought applies to MLPF&S as broker-dealer only. The requested relief will not extend to any investment company advised or sub-advised by MLPF&S.

Commission under Sections 6(c) and 17(b) of the Act, providing relief from the provisions of Section 17(a) of the Act that permitted the Funds to buy from, or sell to, BAS, certain taxable money market instruments including repurchase agreements.<sup>3</sup> On November 1, 2010, BAS was merged into MLPF&S (the “Merger”), with MLPF&S as the surviving corporation. Applicants filed the application to obtain the same relief for MLPF&S and the Applicants as that provided to BAS and the Original Applicants under the BAS Order.

5. Applicants state that MLPF&S and the Advisor are functionally independent of each other and operate as separate entities under the umbrella of BAC, the parent holding company. While MLPF&S and the Advisor are under common control, each company has its own separate directors, has separate officers and employees, is separately capitalized and maintains its own books and records, except for one dual officer as more fully discussed in the application. The Advisor and MLPF&S operate on different sides of appropriate information barriers with respect to portfolio management activities and investment banking activities, and maintain physically separate offices.

6. Investment management decisions for the Funds are determined solely by the Advisor and other investment advisers (as defined in section 2(a)(20) of the Act) that serve as subadvisers to the Funds, that are unaffiliated with the Advisor, and that do not include MLPF&S. The portfolio managers and other employees that are responsible for portfolio management for registered investment companies function exclusively on behalf of the Advisor (or its affiliates), and not MLPF&S. The personnel assigned to the Advisor’s investment advisory operations that are also involved with the business of other affiliates have absolutely no function or responsibility with respect MLPF&S. The compensation of persons employed by the

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<sup>3</sup> See Banc of America Funds Trust, et al., Investment Company Act Release Nos. 28526 (Dec. 1, 2008) (notice) and 285736 (Dec. 29, 2008) (order).

Advisor will not depend on the volume or nature of trades effected by the Advisor for the Funds with MLPF&S under the requested exemption, except to the limited extent that such trades may minimally affect the profits and losses of BAC and its subsidiaries as a whole or to the extent that such trades affect the investment performance of a Fund.

7. The portfolio securities in which each of the Funds, consistent with their stated investment objectives and practices, may invest consist of high-credit quality short-term taxable money market instruments, including repurchase agreements. Future Funds may also be authorized to invest in taxable money market instruments, in addition to the other instruments permitted by their respective investment policies and strategies. Practically all trading in money market instruments takes place in over-the-counter markets consisting of groups of dealer firms that are primarily major securities firms or large banks. Money market instruments are generally traded in round lots of \$1,000,000 on a net basis and do not normally involve either brokerage commissions or transfer taxes. The cost of portfolio transactions to the Funds consists primarily of dealer or underwriter spreads. Spreads vary among money market instruments but dealer spreads generally do not exceed 1-5 basis points (.01% to .05%). It has been the experience of the Funds that spreads have narrowed and there is not a great deal of variation in the spreads charged by the various dealers, except during turbulent market conditions.

8. The money market relies upon elaborate communications networks among dealer firms, principal issuers of money market instruments and principal institutional buyers of such instruments. Because the money market is a dealer market rather than an auction market, there is not a single obtainable price for a given instrument that generally prevails at any given time. A dealer acts either as “agent” on behalf of issuer clients or as “principal” for its own account. In either capacity, a dealer posts rates throughout its internal, private distribution networks that are

intended to reflect “market clearing price levels,” as determined by the dealer. Only customers of the dealer seeking to purchase money market instruments have access to these postings.

9. Because of the variety of types of money market instruments, the money market is very segmented. The market for the different types of instruments will vary in terms of price, volatility, liquidity and availability. Although the rates for the different types of instruments tend to fluctuate closely together, there are significant differences in yield among the various types of instruments, and even within the particular type, depending upon the maturity date and the credit quality of the issuer. Moreover, from time to time segmenting exists within money market instruments with the same maturity date and rating. The segmenting is based on such factors as whether the issuer is an industrial or financial company, whether the issuer is domestic or foreign and whether the instruments are asset-backed or unsecured. Because dealers tend to specialize in certain types of money market instruments, the particular needs of a potential buyer or seller in terms of type of instrument, maturity or credit quality may limit the number of dealers who can provide the most beneficial terms available. Hence, with respect to any given type of instrument, there may be only a few dealers that have such instruments in inventory (or can readily add such instruments to inventory) and can be in a position to quote a competitive price.

10. MLPF&S has become one of the world’s largest dealers in taxable money market instruments, ranking among the top firms in each of the major markets and product areas, as more fully discussed in the application. As of May 4, 2011, MLPF&S was the largest dealer in terms of the number of U.S. commercial paper programs in which it participates as a dealer. It also has been designated as placement agent on 656 commercial paper programs, representing 66% of the total market. Applicants state that MLPF&&S plays a relatively significant role in the repurchase agreement market and that MLPF&S’s market position is among the ten leading

dealers. For the calendar year ended 2010, MLPF&S' average daily repurchase agreement transaction volume was approximately \$198 billion. As of March 1, 2011, MLPF&S was one of twenty primary dealers and has been active in this role since the 1980s. MLPF&S' primary dealer desk actively participates in the U.S. Treasury Bill market (which consists of short-term government obligations that are sold on a weekly basis through public auctions). As of March 31, 2011, MLPF&S market share in the U.S. Treasury Bills' secondary market was 11.9%. Since 2000, MLPF&S has experienced growth in activity involving instruments issued by U.S. Government agencies and government sponsored enterprises. MLPF&S ranked seventh at the year ended 2010 in underwriting activity involving agency instruments with a market share of approximately 5% in 2010. In the Agency Discount Note market, consisting of notes maturing in one year or less, MLPF&S is a major dealer in all of the top-tier discount note programs. MLPF&S is also one of the leading participants in the market for medium-term notes ("MTNs"). MTNs are offered continuously in public or private offerings, with maturities between nine months and thirty years. MTNs represent a significant portion of the longer-term money market investment alternatives because commercial paper is not issued with maturities greater than nine months and bankers' acceptances cannot have an initial maturity of more than six months. MLPF&S is a significant placement agent /dealer for MTN programs, and through May 15, 2011, ranked ninth with a 4.5% market share.

11. Applicants state that over the past seven years, there have been a significant number of mergers and acquisitions involving major banks. From 1990 to March 31, 2011, the number of FDIC- insured commercial banks has declined by 48%. During this period, there has also been a significant decline in the number of primary dealers. As a result, there is a substantially smaller number of major dealers who are active in the money market than was the case only a

few years ago. The reduction in the number of participants makes it even more critical for investors to have access to as many dealers that are actively engaged in the market as possible. The availability of MLPF&S to the Funds is important not only because the number of industry participants has declined but because high-credit quality participants such as MLPF&S are becoming more important in the money market. Applicants state that the Funds not having access to MLPF&S, which is one of the more significant remaining dealers, would place them at a distinct disadvantage compared to other institutional investors.

12. Subject to the general supervision of the Trust's board of trustees ("Board,"), the Advisor is responsible for portfolio decisions and placing execution of the Funds' portfolio transactions. The Advisor, on behalf of the Funds, has no obligation to deal with any dealer or group of dealers in the execution of their portfolio transactions. When placing orders, an Advisor must attempt to obtain the best net price and the most favorable execution of its orders. In doing so, it takes into account such factors as price, the size, type and difficulty of the transaction involved and the firm's general execution and operational facilities. For repurchase agreement transactions in particular, the Advisor places great emphasis on the creditworthiness of the counterparty.

Applicants' Legal Analysis:

1. Applicants request an order pursuant to sections 6(c) and 17(b) of the Act exempting certain transactions from the provisions of section 17(a) of the Act to permit MLPF&S, acting as principal, to sell to or purchase from the Funds taxable money market instruments, and to engage in repurchase agreement transactions with the Funds, subject to the conditions set forth below.



2. Section 17(a) of the Act generally prohibits an affiliated person or principal underwriter of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property. Because MLPF&S and the Advisor are under common control of BAC, MLPF&S could be deemed to be an affiliated person of the Advisor within the meaning of section 2(a)(3)(C) of the Act. Accordingly, MLPF&S could be deemed to be an affiliated person of an affiliated person of the Funds, because the Advisor, as the investment adviser of the Funds, could be deemed to be an affiliated person of the Funds under section 2(a)(3)(E) of the Act. Thus, section 17(a) would prohibit the Funds from selling or purchasing taxable money market instruments to or from MLPF&S to the extent MLPF&S is deemed an affiliated person of an affiliated person of the Funds.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, 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.

4. Applicants contend that the rationale behind the proposed order is based upon the reduction in the number of participants in the money market, the growing and significant role played in the money market by MLPF&S and the growing investment requirements of the Funds. In particular Applicants note the following:

(a) With approximately \$52 billion invested in money market instruments (including repurchase agreements) as of April 30, 2011, the Funds are major buyers and sellers in the money market with a strong need for unrestricted access to large quantities of high credit quality taxable money market instruments. The Applicants believe that denial of access to such a major dealer as MLPF&S in these markets will hinder the Funds' ability to manage their respective portfolios in the most effective manner.

(b) The policy of the Funds of investing in instruments with short maturities and repurchase agreements, combined with the active portfolio management techniques employed by the Advisor, results in the need to make ongoing purchases and sales of taxable money market instruments. This dynamic makes the need to obtain suitable portfolio instruments and repurchase agreements and the most beneficial terms available from the broadest possible range of major participants in the market especially compelling.

(c) MLPF&S is such a major participant in the money market that being unable to deal directly with it may, upon occasion, deprive the Funds of obtaining the most beneficial terms available.

(d) The money market, including the market for repurchase agreements, is highly competitive and precluding a competitor as important as MLPF&S from engaging in principal transactions with the Funds could indirectly deprive the Funds of obtaining the most beneficial terms available even when the Funds trade with other dealers.

5. Applicants believe that the requested order will provide the Funds with broader and more complete access to the money market, which is necessary to carry out the policies and objectives of each of the Funds in obtaining the most beneficial terms in all portfolio transactions. In addition, the Applicants respectfully submit that the requested relief will provide the Funds with important information sources in the money market, to the direct benefit of shareholders in the Funds. Applicants believe that the transactions contemplated by this application are identical to those in which they are currently engaged pursuant to the BAS Order except for the proposed participation of MLPF&S, and that such transactions are consistent with the policies of the Funds as recited in their registration statements and reports filed under the Act. Applicants further believe that the procedures set forth with respect to transactions with MLPF&S are structured in such a way as to insure that the transactions will be, in all instances, reasonable and fair, will not involve overreaching on the part of any person concerned, and that the requested exemption is 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' Conditions:

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

1. Transactions Subject to the Exemption - The exemption shall be applicable to principal transactions in the secondary market and primary or secondary fixed-price dealer offerings not made pursuant to underwriting syndicates. The principal transactions that may be conducted pursuant to the exemption shall be limited to transactions in Eligible Securities.<sup>4</sup> To the extent a Fund is subject to Rule 2a-7, such Eligible Securities must meet the portfolio

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<sup>4</sup> Italicized terms are defined as set forth in paragraph (a) of Rule 2a-7, unless otherwise indicated.

maturity and credit quality requirements of paragraphs (c)(2) and (c)(3) of Rule 2a-7. To the extent a Fund is not subject to Rule 2a-7, such Eligible Securities must meet the requirements of clauses (i), (iii) and (iv) of paragraph (c)(3) of Rule 2a-7. Additionally:

(a) No Fund shall make portfolio purchases pursuant to the exemption that would result directly or indirectly in a Fund investing pursuant to the exemption more than 2% of its Total Assets (or, in the case of a Fund that is not subject to Rule 2a-7, more than 2% of the total of its cash, cash items and Eligible Securities) in instruments that, when acquired by the Fund (either initially or upon any subsequent rollover) were Second Tier Securities; provided that any Fund may make portfolio sales of Second Tier Securities pursuant to the exemption without regard to this limitation.

(b) The exemption shall not apply to an Unrated Security other than a Government Security.

(c) The exemption shall not apply to any instrument, other than a repurchase agreement, issued by BAC or any affiliated person thereof or to any instrument subject to a Demand Feature or Guarantee issued by BAC or any affiliated person thereof.

2. Repurchase Agreement Requirements - The Funds may engage in repurchase agreements with MLPF&S only if MLPF&S has: (a) net capital, as defined in rule 15c3-1 under the 1934 Act, of at least \$100 million and (b) a record (including the record of predecessors) of at least five years continuous operations as a dealer during which time it engaged in repurchase agreements relating to the kind of instrument subject to the repurchase agreement. MLPF&S shall furnish the Advisor with financial statements for its most recent fiscal year and the most recent semi-annual financial statements made available to their customers. The Advisor shall determine that MLPF&S complies with the above requirements and with the repurchase

agreement guidelines adopted by the Boards. Each repurchase agreement will be Collateralized Fully.

3. Volume Limitations on Transactions - Transactions other than repurchase agreements conducted pursuant to the exemption shall be limited to no more than 25% of (a) the direct or indirect purchases or sales, as the case may be, by each Fund of Eligible Securities other than repurchase agreements; and (b) the purchases or sales, as the case may be, by MLPF&S of Eligible Securities other than repurchase agreements. Transactions comprising repurchase agreements conducted pursuant to the exemption shall be limited to no more than 10% of (a) the repurchase agreements directly or indirectly entered into by the relevant Fund and (b) the repurchase agreements transacted by MLPF&S. These calculations shall be measured on an annual basis (the fiscal year of each Fund and of MLPF&S) and shall be computed with respect to the dollar volume thereof.

4. Information Required to Document Compliance with Price Test – Before any transaction may be conducted pursuant to the exemption, the relevant Fund or the Advisor must obtain such information as it deems necessary to determine that the price test (as defined in condition 5 below) applicable to such transaction has been satisfied. In the case of purchase or sale transactions, the Funds or the Advisor must make and document a good faith determination with respect to compliance with the price test based upon current price information obtained through the contemporaneous solicitation of bona fide offers in connection with the type of instrument involved (comparable security falling within the same category of instrument, credit rating, maturity and segment, if any, but not necessarily the identical instrument or issuer). With respect to prospective purchases of instruments, these dealers must be those who have, in their inventories, or who otherwise have access to taxable money market instruments of the categories

and the types desired and who are in a position to quote favorable prices with respect thereto.

With respect to the prospective disposition of instruments, these dealers must be those who, in the experience of the Funds and the Advisor, are in a position to quote favorable prices. Before any repurchase agreements are entered into pursuant to the exemption, the Funds or the Advisor must obtain and document competitive quotations from at least two other dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required.

5. Price Test - In the case of purchase and sale transactions, a determination will be required in each instance, based upon the information available to the Funds and the Advisor, that the price available from MLPF&S is at least as favorable as that available from other sources. In the case of “swaps” involving trades of one instrument for another, the price test shall be based upon the transaction viewed as a whole, and not upon the two components thereof individually. With respect to transactions involving repurchase agreements, a determination will be required in each instance, based on the information available to the Funds and the Advisor, that the income to be earned from the repurchase agreement is at least equal to that available from other sources in connection with comparable repurchase agreements.

6. Permissible Dealer Spread – MLPF&S’ spreads in regard to any transaction with the Funds will be no greater than its customary dealer spreads, which will in turn be consistent with the average or standard spread charged by dealers in taxable money market instruments for the type of instrument and the size of transaction involved.

7. Parties Must Be Factually Independent - The Advisor on the one hand, and MLPF&S, on the other, will operate on different sides of appropriate walls of separation with

respect to the Funds and Eligible Securities. The walls of separation will include all of the following characteristics and such others as may from time to time be considered reasonable by MLPF&S and the Advisor to facilitate the factual independence of the Advisor from MLPF&S.

(a) The Advisor will maintain offices physically separate from those of MLPF&S.

(b) The compensation of persons assigned to the Advisor (i.e., executive, administrative or investment personnel) will not depend on the volume or nature of trades effected by the Advisor for the Funds with MLPF&S under this exemption, except to the extent that such trades may affect the profits and losses of BAC and its subsidiaries as a whole or to the extent that such trades affect the investment performance of a Fund.

(c) MLPF&S will not share any of its respective profits or losses on such transactions with the Advisor, except to the extent that such profits and losses affect the general firmwide compensation of BAC and its subsidiaries as a whole.

(d) Personnel assigned to the Advisor's investment advisory operations on behalf of the Funds will be exclusively devoted to the investment advisory business and affairs of the Advisor and the businesses of its affiliates (other than MLPF&S), and have lines of reporting solely within the Advisor or its affiliates (other than MLPF&S). The personnel assigned to the Advisor's investment advisory operations that are also involved with the business of other affiliates have absolutely no function or responsibility with respect to MLPF&S.

(e) Personnel assigned to MLPF&S will not participate in the decision-making process for or otherwise seek to influence the Advisor other than in the normal course of sales and dealer activities of the same nature as are simultaneously being carried out with respect to nonaffiliated institutional clients. The Advisor, on the one hand, and MLPF&S, on the other, may nonetheless maintain affiliations other than with respect to the Funds, and in addition with

respect to the Funds as follows:

(i) Advisor personnel may rely on research, including credit analysis and reports prepared internally by various subsidiaries and divisions of MLPF&S.

(ii) Certain senior executives of BAC with responsibility for overseeing operations of various divisions, subsidiaries and affiliates of BAC are not precluded from exercising those functions over the Advisor because they oversee MLPF&S as well; provided that such persons shall not have any involvement with respect to proposed transactions pursuant to the exemption and will not in any way attempt to influence or control the placing by the Funds or the Advisor of orders in respect of Eligible Securities with MLPF&S.

8. Record-Keeping Requirements - The Funds and the Advisor will maintain such records with respect to those transactions conducted pursuant to the exemption as may be necessary to confirm compliance with the conditions to the requested relief. In this regard:

(a) Each Fund shall maintain an itemized daily record of all purchases and sales of instruments pursuant to the exemption, showing for each transaction: the name and quantity of instruments; the unit purchase or sale price; the time and date of the transaction; and whether such instrument was a First Tier Security or a Second Tier Security. Such records also shall, for each transaction, document two quotations received from other dealers for comparable instruments (except that, in the case of repurchase agreements and consistent with condition 4, if quotations are unavailable from two such dealers only one other competitive quotation is required), including: the names of the dealers; the names of the instruments; the prices quoted; the times and dates the quotations were received; and whether such instruments were First Tier Securities or Second Tier Securities.

(b) Each Fund shall maintain a ledger or other record showing, on a daily basis, the



percentage of the Fund's Total Assets (or, in the case of a Fund that is not subject to Rule 2a-7, the percentage of the total of its cash, cash items and Eligible Securities) represented by Second Tier Securities acquired from MLPF&S.

(c) Each Fund shall maintain records sufficient to verify compliance with the volume limitations contained in condition 3, above. MLPF&S will provide the Funds with all records and information necessary to implement this requirement.

(d) Each Fund shall maintain records sufficient to verify compliance with the requirements related to repurchase agreements contained in condition 2, above.

The records required by this condition 8 will be maintained and preserved in the same manner as records required under rule 31a-1(b)(1) of the Act.

9. Guidelines – MLPF&S and the Advisor, with the assistance of their compliance departments, will prepare and, as necessary, update guidelines for personnel of the MLPF&S or the Advisor, as the case may be, to make certain that transactions conducted pursuant to the exemption comply with the conditions set forth therein, and that the parties generally maintain arm's-length relationships. In training personnel of MLPF&S, particular emphasis will be given to the fact that the Funds are to receive rates as favorable as other institutional purchasers buying the same quantities. The compliance departments of MLPF&S and the Advisor will periodically monitor the activities of MLPF&S and the Advisor to make certain that the conditions set forth in the exemption are adhered to.

10. Audit Committee Review - The audit committee or another committee which, in each case, consists of members of the Board who are not interested persons as defined in section 2(a)(19) of the Act ("Independent Members"), will approve, periodically review and update as necessary, guidelines for the Advisor and MLPF&S reasonably designed to ensure that

transactions conducted pursuant to the exemption comply with the conditions set forth herein and that the procedures described herein are followed in all respects. The respective audit committees will periodically monitor the activities of the Funds, the Advisor and MLPF&S in this regard to ensure that these matters are being accomplished.

11. Scope of Exemption - Applicants expressly acknowledge that any order issued on the application would grant relief from section 17(a) of the Act only, and would not grant relief from any other section of, or rule under, the Act including, without limitation, Rule 2a-7.

12. Board Review - The Board, including a majority of the Independent Members, will have approved each Fund's participation in transactions conducted pursuant to the exemption and determined that such participation by the Fund is in the best interests of the Fund and its shareholders. The minutes of the meeting of the Board at which this approval is given will reflect in detail the reasons for the Board's determinations. The Boards will review no less frequently than annually a Fund's participation in transactions conducted pursuant to the exemption during the prior year and determine whether the Fund's participation in such transactions continues to be in the best interests of the Fund and its shareholders. Such review will include (but not be limited to): (a) a comparison of the volume of transactions in each type of instrument conducted pursuant to the exemption to the market presence of MLPF&S in the market for that type of instrument; and (b) a determination that the Funds are maintaining appropriate trading relationships with other sources for each type of instrument to ensure that there are appropriate sources for the quotations required by condition 4 above. The minutes of

the meetings of the Boards at which this determination is made will reflect in detail the reasons for the Boards' determinations.

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

Elizabeth M. Murphy  
Secretary