

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28428; 813-00355]

HLHZ Investments II, L.L.C. and Houlihan, Lokey, Howard & Zukin, Inc.; Notice of
Application

September 30, 2008

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

Action: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the “Act”) granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

Summary of Application: Applicants request an order to exempt certain limited liability companies and other investment vehicles established primarily for the benefit of eligible employees of Houlihan, Lokey, Howard & Zukin, Inc. (“HLHZ”) and its affiliates from certain provisions of the Act. Each limited liability company or other investment vehicle will be an “employees’ securities company” within the meaning of section 2(a)(13) of the Act.

Applicants: HLHZ Investments II, L.L.C. (the “Initial Fund”) and HLHZ.

Filing Dates: The application was filed on August 26, 2004 and amended on November 17, 2004, March 14, 2008, and June 20, 2008. 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 October 27, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants, 1930 Century Park West, Los Angeles, CA 90067-6802.

For Further Information Contact: Laura J. Riegel, Senior Counsel, at (202) 551-6873 or Julia Kim Gilmer, 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 Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1520 (telephone (202) 551-5850).

Applicants' Representations:

1. HLHZ is an investment banking firm organized under the laws of the State of California. HLHZ provides a range of investment banking services, including mergers and acquisitions, financing, financial opinions and advisory services and financial restructuring. HLHZ and its "affiliates," as defined in rule 12b-2 under the Securities Exchange Act of 1934 (the "1934 Act"), are referred to collectively as "HLHZ Group" and each entity within HLHZ Group is referred to individually as a "HLHZ Group entity."

2. The Initial Fund is a California limited liability company. HLHZ Group may offer in the future other investment vehicles identical in all material respects to the Initial Fund (other than investment objectives and strategies and form of organization) (together with the

Initial Fund, the “Funds”). Each Fund will be a limited liability company or other investment vehicle formed as an “employees’ security company” within the meaning of section 2(a)(13) of the Act. Each Fund will operate as a non-diversified, closed-end management company. The Funds have been or will be established primarily for key employees of the HLHZ Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate its recruitment of high caliber professionals.

3. Each Fund will have a managing member or general partner (“Manager”) that is an HLHZ Group entity and that will manage, operate, and control such Fund. The Manager will be registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) if required by applicable law. HLHZ, the Manager of the Initial Fund, is exempt from registration as an investment adviser under the Advisers Act. The Manager will be authorized to delegate investment management responsibility to a HLHZ Group entity or a committee of HLHZ Group employees. The ultimate responsibility for the Funds’ investments will remain with the Manager. The Manager may be entitled to receive compensation or a performance-based fee (a “carried interest”).¹

4. Interests in the Funds (“Interests”) will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the “1933 Act”) or Regulation D under the 1933 Act (“Regulation D”). Interests will be sold only to “Eligible Employees,” “Eligible Consultants” or “Qualified Entities,” in each case as defined below, or to HLHZ Group entities. Prior to offering Interests in a Fund to an Eligible Employee or Eligible Consultant (either, an “Eligible Participant”) or a Qualified Entity, the Manager must reasonably believe that each

¹ A “carried interest” is an allocation to the Manager based on net gains in addition to the amount allocable to such entity in proportion to its capital contributions. A Manager that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205-3 under the Advisers Act. Any carried interest paid to a Manager that is not registered under the Advisers Act will comply with section 205(b)(3) of the Advisers Act, with the Fund treated as a business development company solely for purposes of that section.

Eligible Participant that is required to make an investment decision with respect to whether or not to participate in a Fund, on behalf of itself or its related Qualified Entity, will be a sophisticated investor capable of understanding and evaluating the risks of participating in such Fund without the benefit of regulatory safeguards. All investors in a Fund will be “Members” and all Members in a Fund other than the Manager will be “Participants.”

5. An “Eligible Employee” is an individual who is a current or former employee, officer, or director of HLHZ Group and (a) meets the standards of an “accredited investor” under rule 501(a)(5) or 501(a)(6) of Regulation D or (b) is one of 35 individuals who are “knowledgeable employees,” as defined in rule 3c-5(a)(4) under the Act (with the Fund treated as though it were a “covered company” for purposes of the rule) (such individuals, “Non-Accredited Investors”). A Fund may not have more than 35 Non-Accredited Investors.

6. An “Eligible Consultant” is a natural person or entity that a HLHZ Group entity has engaged on retainer to provide services and professional expertise on an ongoing basis as regular consultants or business or legal advisors and shares a community of interest with the HLHZ Group and HLHZ Group employees and (a) meets the standards of an “accredited investor” under rule 501(a)(5) or 501(a)(6) of Regulation D, if a natural person or (b) meets the standards of an “accredited investor” under rule 501(a), if an entity.

7. In the discretion of a Manager and at the request of an Eligible Employee, Interests may be assigned to a Qualified Entity of an Eligible Employee or purchased by the Qualified Entity. A “Qualified Entity” is (a) a trust of which the trustee, grantor and/or beneficiary is an Eligible Employee, or (b) a partnership, limited liability company, corporation or other entity controlled by an Eligible Employee or Eligible Consultant, which trust or other entity meets the standards of an “accredited investor” under rule 501(a) of Regulation D.

8. The terms of a Fund will be fully disclosed to each Eligible Participant and, if applicable, to each Qualified Entity at the time they are invited to participate in a Fund. Each Eligible Participant and applicable Qualified Entity will receive a copy of the Fund's organizational documents prior to investment in the Fund. The Manager of each Fund will send Participants audited financial statements of the Fund as soon as practicable after the end of the Fund's fiscal year. In addition, the Manager will send a report to each Participant of the Fund setting forth the tax information necessary for the preparation of the Participant's federal and state income tax returns.

9. Interests in a Fund will be non-transferable except with the prior written consent of the Manager. No person will be admitted into a Fund unless the person is an Eligible Participant, a Qualified Entity, or an HLHZ Group entity. No sales load will be charged in connection with the sale of Interests.

10. The Initial Fund has the right, but not the obligation, to purchase all or any portion of the Interests of a Member who ceases to be a current employee, officer or director of HLHZ Group for any reason. The repurchase price for all or any portion of an Interest will be based on a preset book-value based formula set forth in the operating documents. The Manager of any Fund will have the absolute right to purchase any Interest from any Member, for a value determined by a formula set forth in the Fund's partnership or operating agreements, subscription agreements or similar documents, if the Manager determines in good faith that the Member's continued ownership of the Interest jeopardizes the Fund's status as an "employees' securities company" under the Act.

11. A Fund may invest its portfolio investments directly or indirectly through other pooled investment vehicles (including a limited partnership or limited liability company).² Subject to the terms of the applicable operating agreement, a Fund will be permitted to enter into transactions involving (a) a HLHZ Group entity, (b) a Fund investment, or (c) any Member or person or entity affiliated with a Member. Prior to entering into any of these transactions, the Manager must determine that the terms are fair to the Members.

12. A Fund will not borrow from any person if such borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). A Fund will not lend funds to any HLHZ Group entity.

13. A Fund will not acquire any security issued by a registered investment company if immediately after the acquisition, the Fund will own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis:

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned

² Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern the eligibility of a Fund to invest in an entity relying on section 3(c)(1) or section 3(c)(7) of the Act or any such entity's status under the Act.

(a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a-1 under the Act, the exemption is limited as set forth in the application.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) an HLHZ Group entity, acting as principal, to engage in any transaction directly or indirectly with any Fund or any company controlled by such Fund; and (b) any Fund to invest in or engage in any transaction with any HLHZ Group entity, acting as principal, (i) in which the Fund, any company controlled by the Fund, or any HLHZ Group entity has invested or will invest, or (ii) with which the Fund, any company controlled by the Fund, or any HLHZ Group entity is or will become otherwise affiliated.

4. Applicants state that an exemption from section 17(a) is consistent with the policy of each Fund and the protection of investors. Applicants state that the Members in each Fund will be fully informed of the possible extent of the Fund's dealings with the HLHZ Group. Applicants also state that, as experienced professionals employed in investment banking, securities, or investment management businesses, Members in each Fund will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among Members and HLHZ Group is the best insurance against any risk of abuse.

5. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief under rule 17d-1 to permit affiliated persons of each Fund, or affiliated persons of such persons, to participate in any joint arrangement in which the Fund or a company controlled by the Fund is a participant.

6. Applicants state that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because a Participant in such Fund or other affiliated person of the Fund (or any affiliated person of the affiliated person) also had, or contemplated making, a similar investment. Applicants also submit that the types of investment opportunities considered by a Fund often require each participant to make available funds in an amount that may be substantially greater than that available to the Fund alone. Applicants contend that, as a result, the only way in which a Fund may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to

structure co-investments and joint transactions in the context of employees' securities companies will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f-2 under the Act allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f-2 to permit the following exceptions from the requirements of rule 17f-2: (a) a Fund's investments may be kept in the locked files of the Manager for purposes of paragraph (b) of the rule; (b) for purposes of paragraph (d) of the rule, (i) employees of the Manager will be deemed to be employees of the Funds, (ii) officers of the Manager and the Manager of a Fund will be deemed to be officers of the Fund, and (iii) the members of the board of managers or directors of the Manager will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedures under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Manager. With respect to certain Funds, applicants expect that many of their investments will be evidenced only by partnership or operating agreements, subscription agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants believe that these instruments are most suitably kept in the Manager's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g-1 requires that a majority of directors who are not interested persons ("independent directors") take certain actions and give certain approvals relating to fidelity bonding. Applicants request relief to permit the Manager's board of managers or directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule.

Applicants state that, because all the members of a board of managers or directors of a Manager will be interested persons, a Fund could not comply with rule 17g-1 without the requested relief. Specifically, each Fund will comply with rule 17g-1 by having a majority of the members of the board of managers or directors of the Manager take such actions and make such approvals as are set forth in rule 17g-1. Applicants also request an exemption from the requirements of paragraph (g) of rule 17g-1 relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors, paragraph (h) of rule 17g-1 relating to the appointment of a person to make the filings and provide notices required by paragraph (g), and an exemption from the requirements of paragraph (j)(3) that the Funds comply with the fund governance standards defined in rule 0-1(a)(7). Applicants state that each Fund will comply with all other requirements of rule 17g-1.

9. Section 17(j) of the Act and paragraph (b) of rule 17j-1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j-1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j-1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

10. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for

periodic reports have little relevance to a Fund and would entail administrative and legal costs that outweigh any benefit to the Members. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Members. Applicants also request an exemption from section 30(h) of the Act to the extent necessary to exempt the Manager of each Fund and any other persons who may be deemed to be members of an advisory board of a Fund from filing Forms 3, 4, and 5 under section 16(a) of the 1934 Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

11. Rule 38a-1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the federal securities law and to appoint a chief compliance officer. Each Fund will comply with rule 38a-1(a), (c) and (d), except that (a) because the Fund does not have a board of directors, the board of managers or directors of the Manager will fulfill the responsibilities assigned to the Fund's board of directors under the rule, (b) because the board of managers or directors of the Manager does not have any independent directors, approval by a majority of the independent directors required by rule 38a-1 will not be obtained; and (c) because the board of managers or directors of the Manager does not have any independent directors, the Fund will comply with the requirement in rule 38a-1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the board of managers or directors of the Manager as constituted.

Applicants' Conditions:

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which a Fund is a party (the "Section 17 Transaction") will be effected only if the Manager determines that:

(a) the terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Members of such Fund and do not involve overreaching of such Fund or its Members on the part of any person concerned; and

(b) the Section 17 Transaction is consistent with the interests of the Members of such Fund, such Fund's organizational documents and such Fund's reports to its Members.

In addition, the Manager of each Fund will record and preserve a description of Section 17 Transactions, the Manager's findings, the information or materials upon which the Manager's findings are based, and the basis for the findings. All such records will be maintained for the life of the Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff. Each Fund will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the Manager of each Fund will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The Manager of each Fund will not invest the funds of such Fund in any investment in which a “Co-Investor” (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives such Manager sufficient, but not less than one day’s, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Fund has the opportunity to dispose of such Fund’s investment prior to or concurrently with, and on the same terms as, and pro rata with the Co-Investor. The term “Co-Investor” means, with respect to any Fund: (a) an “affiliated person” (as defined in section 2(a)(3) of the Act) of such Fund; (b) any HLHZ Group entity; (c) an officer or director of HLHZ Group; (d) an entity in which the Manager acts as a managing member or a general partner or has a similar capacity to control the sale or other disposition of the entity’s securities. The restrictions contained in this condition shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a “parent”) of which such Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the 1934 Act; (d) when the investment is comprised of NMS stocks pursuant to section 11A(a)(2) of the 1934 Act and rule 600(a) of Regulation NMS thereunder; (e) when the investment is comprised of government securities as defined in section 2(a)(16) of the Act; or (f) when the investment is comprised of securities that are listed or traded on any foreign

securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Fund and the Manager will maintain and preserve, for the life of such Fund and at least six years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the Participants in such Fund, and each annual report of such Fund required to be sent to such Participants, and agree that all such records will be subject to examination by the Commission and its staff. Each Fund shall preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years after the inception of the Fund.

5. The Manager will send to each Participant who had an Interest in a Fund, at any time during the fiscal year then ended, Fund financial statements that have been audited by the Fund's independent accountants. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of a Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, within 120 days after the end of each fiscal year of the Fund or as soon as practicable after the end of each fiscal year, the Manager shall send a report to each person who was a Participant at any time during the fiscal year then ended setting forth tax information necessary for the preparation by the Participant of his or her federal and state income tax returns and a report of the investment activities of the Fund during that year.

6. If a Fund makes purchases or sales from or to an entity affiliated with the Fund by reason of an officer, director or employee of the HLHZ Group (a) serving as an officer, director, manager or investment adviser of the entity, or (b) having a 5% or more investment in the entity,

such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

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

Florence E. Harmon
Acting Secretary