

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29068; File No. 812-13653]

Madison Asset Management, LLC, et al.; Notice of Application

December 7, 2009

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

Action: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (“Act”) for an 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: Applicants request an order that would permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (“UITs”) that are within or outside the same group of investment companies.

Applicants: Madison Asset Management, LLC (“MAM”), MEMBERS Mutual Funds (“MMF”), Ultra Series Fund (“USF”), Madison Mosaic Equity Trust, Madison Mosaic Income Trust, Madison Mosaic Tax-Free Trust, Madison Mosaic Government Money Market (each, a “Madison Mosaic Fund,” and collectively, the “Madison Mosaic Funds,” and together with MMF and USF, the “Trusts”), Madison Investment Advisors, Inc. (“Madison”) and Madison Mosaic, LLC (“MMLLC”).

Filing Dates: The application was filed on April 16, 2009 and amended on September 4, 2009, December 4, 2009, and December 7, 2009.

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 December 28, 2009, 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: c/o Madison/Mosaic Legal and Compliance Department, 8777 N. Gainey Center Drive, #220, Scottsdale, AZ 85258.

For Further Information Contact: John Yoder, Senior Counsel, at (202) 551-6878, or Marilyn Mann, Branch Chief, at (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 Web site 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. MMF is a statutory trust organized under the laws of Delaware. USF and the Madison Mosaic Funds are business trusts organized under the laws of Massachusetts. Each Trust is registered under the Act as an open-end management investment company and, except for Madison Mosaic Government Money Market, offers multiple series ("Funds").¹ USF is offered

¹ Applicants request that the order also extend to any future series of the Trusts, and any other existing or future registered open-end management investment companies and any series thereof that are, or may in the future be, advised by MAM, Madison or MMLLC or any other investment adviser controlling, controlled by, or under common control with MAM, Madison or MMLLC (together with the Trusts, the "Funds"). 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.

solely to CUNA Mutual Insurance Society (“CMIS”) and its separate accounts (together with the separate accounts of any unaffiliated insurance company that may invest in the future in USF, “Separate Accounts”) which support the variable annuity contracts and variable life insurance policies it issues. The Separate Accounts may be registered under the Act (“Registered Separate Accounts”) or unregistered under the Act (“Unregistered Separate Accounts”).

2. MAM, an Iowa corporation, is registered under the Investment Advisers Act of 1940 (“Advisers Act”) and serves as investment adviser to MMF and USF. MAM is the investment adviser to each of the Fund of Funds, as defined below. Madison, a Wisconsin corporation, and MMLLC, a Wisconsin limited liability corporation, are each registered as investment advisors under the Advisers Act and jointly serve as investment advisors to the Madison Mosaic Funds, with the exception of the Madison Institutional Equity Option Fund (a series of Madison Mosaic Equity Trust), which is advised by MAM. MAM and MMLLC are controlled by Madison. CMIS has a non-voting interest in MAM and does not control MAM within the meaning of section 2(a)(9) of the Act.²

3. Applicants request relief to permit, (a) certain Funds (each, a “Fund of Funds”) to acquire shares of registered open-end management investment companies (the “Unaffiliated Underlying Funds”) and unit investment trusts (“Unaffiliated Underlying Trusts,” and together with the Unaffiliated Underlying Funds, the “Unaffiliated Funds”) that are not part of the same “group of

² Under a prior order, the Commission granted relief to MMF, USF, Members Capital Advisors, Inc. (“MCA”) and CUNA Mutual Life Insurance Company from the provisions of sections 12(d)(1)(A), 12(d)(1)(B) and 17(a) of the Act, pursuant to which certain series of MMF and USF acquire shares of other registered open-end investment companies that are within or outside the same group of investment companies. MEMBERS Mutual Funds, et al., Investment Company Act Release Nos. 27598 (December 13, 2006)(notice) and 27657 (January 9, 2007)(order) (“Existing Order”). On April 15, 2009, MCA, an indirectly wholly owned subsidiary of CMIS, and CMIS entered into an agreement under which MAM would become the investment adviser to MMF and USF (the “Transaction”). MAM became the investment adviser to MMF and USF on July 1, 2009. On June 30, 2009, the Commission staff issued a no-action letter permitting MAM to rely on the Existing Order until the earlier of the receipt of any order granted by the Commission on the application or December 30, 2009. Madison Asset Management, LLC, et al. (pub. avail. June 30, 2009).

investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Funds of Funds, (b) the Unaffiliated Underlying Funds, their principal underwriters and any broker or dealer (“Broker”) registered under the Securities Exchange Act of 1934 to sell their shares to the Fund of Funds, (c) the Funds of Funds to acquire shares of certain other Funds in the same “group of investment companies” (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (the “Affiliated Funds,” and together with the Unaffiliated Funds, the “Underlying Funds”), and (d) the Affiliated Funds, their principal underwriters and any Brokers to sell shares of the Affiliated Funds to the Funds of Funds. Certain of the Unaffiliated Funds may be listed and traded on a national securities exchange at negotiated prices (“ETFs”). Each Fund of Funds also may invest in securities other than shares of an investment company and in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act that are consistent with its investment objectives.

Applicants’ Legal Analysis:

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act 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 the shares of the investment company 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 from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Unaffiliated Underlying Funds and Affiliated Funds, their principal underwriters and any Brokers to sell shares to the Funds of Funds in excess of the limits set forth in sections 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons 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 state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants propose a condition prohibiting: (a) MAM and any person controlling, controlled by or under common control with MAM, any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by MAM or any person controlling, controlled by or under common control with MAM (collectively, the "Group"), and (b)

any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (“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 (collectively, the “Subadviser Group”) from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. No Separate Account will be a member of the Group or Subadviser Group.

5. Applicants further state that condition 2 precludes a Fund of Funds, MAM, any Subadviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a “Fund of Funds Affiliate”) from taking advantage of an Unaffiliated Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or the Unaffiliated Fund’s investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, an “Unaffiliated Fund Affiliate”). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) from causing an Unaffiliated 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 officer, director, trustee, member of an advisory board, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Subadviser, member of an advisory board, or employee is an affiliated person (each, an “Underwriting Affiliate,” except any person whose relationship to the

Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an “Affiliated Underwriting.”

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds’ investment in the Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and Unaffiliated Underlying Fund execute an agreement stating, without limitation, that their boards of directors or trustees (“Boards”) and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (“Participation Agreement”). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.³

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Independent Trustees”), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund’s advisory contract(s). Applicants further state that MAM will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated

³ An Unaffiliated Underlying Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

Underlying Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by MAM, or an affiliated person of MAM, other than any advisory fees paid to MAM or an affiliated person of MAM by an Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants 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 Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (“NASD Conduct Rule 2830”), if any, will only be charged at the Fund of Funds level or at the Underlying 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 funds of funds as set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding variable annuity and variable life insurance contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring 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), except to the extent that such Underlying

Fund: (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an “affiliated person” of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) 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; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund’s outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund

from selling shares to and redeeming shares from a Fund of Funds.⁴

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 (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.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act, as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.⁵ Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

⁴ Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

⁵ Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

Applicants' Conditions:

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

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated 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) an Unaffiliated 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 an Unaffiliated Fund, the Group or a Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, then the Group or the Subadviser Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadviser Group with respect to an Unaffiliated Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Underlying Fund) or the sponsor (in the case of an Unaffiliated Underlying Trust).

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

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that MAM and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration

received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Underlying Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Underlying 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 Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying 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 Unaffiliated Underlying 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 Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Underlying Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate.

The Board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether or not the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Underlying Fund. The Board of the Unaffiliated Underlying Fund will consider, among other things: (a) whether or not the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying 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 or not the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of an Unaffiliated Underlying 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. Each Unaffiliated Underlying 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 from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) party from whom the securities were acquired, (b) identity of the underwriting

syndicate's members, (c) terms of the purchase, and (d) information or materials upon which the determinations of the Board of the Unaffiliated Underlying Fund were made.

8. Prior to its investment in shares of an Unaffiliated Underlying Fund in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers 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 Unaffiliated Underlying Fund in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Underlying Fund of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Fund of Funds 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 each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. MAM will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by MAM, or an affiliated person of MAM, other than any advisory fees paid to MAM or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated 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 Fund of Funds.

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 Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying 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 a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other 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 that such Underlying Fund: (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a

company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

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

Florence E. Harmon
Deputy Secretary