SEC MAIL PROCESSING
RECEIVED
DEC 15 2006
WASH, D.C. 151 SECTION

As filed with the Securities and Exchange Commission on December 15, 2006.

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

FOURTH AMENDED AND RESTATED APPLICATION FOR AN ORDER UNDER SECTION 12(D)(1)(J) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING AN EXEMPTION FROM SECTION 12(D)(1)(A) AND (B) OF THE ACT, AND UNDER SECTIONS 6(C) AND 17(B) OF THE ACT GRANTING AN EXEMPTION FROM SECTION 17(A) OF THE ACT

In the Matter of:

PROFUNDS
ACCESS ONE TRUST
PROSHARES TRUST
PROSHARE ADVISORS LLC
PROFUND ADVISORS LLC

File No. 812-13029

Please send all communications to:

Steven G. Cravath, Esq.
ProFund Advisors LLC
7501 Wisconsin Avenue, Suite 1000
Bethesda, MD 20814
240.497.6504

with copies to:

John Loder, Esq.
Ropes & Gray
One International Place
Boston, MA 02110-2624

Stuart M. Strauss, Esq.
Clifford Chance US LLP
31 West 52nd Street
New York, NY 10019

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the Matter of: **PROFUNDS** **ACCESS ONE TRUST** **PROSHARES TRUST** **PROSHARE ADVISORS LLC** **PROFUND ADVISORS LLC** **7501 Wisconsin Ave., Suite 1000** **Bethesda, Maryland 20814** **File No. 812-13029**	**THIRD AMENDED AND RESTATED APPLICATION FOR AN ORDER UNDER SECTION 12(D)(1)(J) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING AN EXEMPTION FROM SECTION 12(D)(1)(A) AND (B) OF THE ACT, AND UNDER SECTIONS 6(C) AND 17(B) OF THE ACT GRANTING AN EXEMPTION FROM SECTION 17(A) OF THE ACT**

I. SUMMARY OF REQUESTED RELIEF

ProFunds, Access One Trust, ProShares Trust ("ETF Trust") (together, the "Trusts"), ProShare Advisors LLC and ProFund Advisors LLC (the "Advisers"[1]) (the Trusts and the Advisers together are the "Applicants") submit this third amended and restated application ("Application") to the Securities and Exchange Commission (the "Commission") requesting an order under Section 12(d)(1)(J) of the Investment Company Act of 1940, as amended (the "Act"), exempting certain transactions involving the Applicants from Section 12(d)(1)(A) and 12(d)(1)(B) of the Act, and under Sections 6(c) and 17(b) of the Act exempting certain transactions involving the Applicants from Sections 17(a)(1) and (2) of the Act. Applicants request the exemptions to permit registered management investment companies and unit investment trusts registered under the Act that are not part of the same "group of investment

[1] All references to the term "Advisers" herein include successors-in-interest to an Adviser. Successors-in-interest are limited to any entity resulting from a reorganization of an Adviser into another jurisdiction or a change in the

companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Trusts (such management investment companies are referred to herein as "Investing Management Companies", such unit investment trusts are referred to herein as "Investing Trusts", and Investing Management Companies and Investing Trusts are collectively referred to herein as "Funds of Funds"), to acquire shares in series of the Trusts (each a "Fund," and collectively the "Funds") in excess of the limits in Section 12(d)(1)(A) of the Act, and to permit a Fund, any principal underwriter for a Fund, and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of a Fund to a Fund of Funds in excess of the limits of Section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) each open-end management investment company or unit investment trust registered under the Act, that currently or subsequently is part of the same "group of investment companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Trusts and is advised or sponsored by the Advisers or any entity controlling, controlled by, or under common control with the Advisers (such open-end management investment companies are referred to herein as "Open-end Funds", such unit investment trusts are referred to herein as "UIT Funds," and both Open-end Funds and UIT Funds are included in the term "Funds"); (2) each Fund of Funds that enters into a Participation Agreement with a Fund, as described below, to purchase shares of the Funds; and (3) any principal underwriter to a Fund or Broker selling shares of a Fund.

Applicants are requesting an order under section 12(d)(1)(J) of the Act exempting certain transactions involving the Trusts from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act, and under sections 6(c) and 17(b) of the Act exempting certain transactions involving the Trusts from

---

type of business organization.

section 17(a) of the Act. The requested exemption would permit the Fund of Funds to acquire shares in the Funds beyond the limitations in section 12(d)(1)(A), and the Funds, and any principal underwriter for a Fund and any Broker to sell shares of the Funds to a Fund of Funds beyond the limitations in section 12(d)(1)(B). Applicants are also requesting relief from sections 17(a)(1) and (2) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds that owns 5% or more of the shares of a Fund.

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

II. ORGANIZATION, STRUCTURE, OWNERSHIP AND OPERATION OF THE APPLICANTS

A. The Trusts and the Funds

The Trusts are registered as open-end, management investment companies under the Act. The Funds are separate investment portfolios of each Trust and pursue distinct investment objectives and strategies. Shares of certain series of ProFunds and Access One Trust are sold publicly to retail investors ("Public Funds"), and shares of other series of ProFunds and Access One Trust are sold to insurance company separate accounts funding variable life and variable annuity contracts and other appropriate investors ("VA Funds"). Series of the ETF Trust are offered as exchange-traded funds that operate in reliance on an order from the Commission permitting their shares to be redeemed in large aggregations or baskets called Creation Units

(each such Fund, an "ETF Fund").[2] Only broker-dealers and other entities that have entered into dealer agreements with the ETF Funds' principal underwriter ("Authorized Participants") may purchase and redeem Creation Units directly from the ETF Funds. Substantially all investors in the ETF Funds, therefore, will purchase and sell ETF Funds in the secondary market. Each ProFund and ETF Fund, other than the Money Market ProFund and the ProFund VP Money Market, seeks to provide investment results that correspond to the performance of a specific benchmark. Each current series of Access One Trust (each an "Access Fund"), other than the Access Money Market Fund, seeks to provide investment results that correspond generally to the total return (or inverse total return) of a specified market.

Certain Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on Section 12(d)(1)(E) of the Act. A Fund of Funds may not invest in a Fund that serves as a feeder Fund unless the feeder Fund is part of the same group of investment companies as its corresponding master fund.

B. The Investment Advisers

ProFund Advisors LLC is a Maryland limited liability company, and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"). Under an advisory agreement, ProFund Advisors serves as investment adviser to the Public Funds and VA Funds, and oversees the daily operations of the Public Funds and VA Funds. Each Public Fund and each VA Fund is obligated to pay ProFund Advisors an investment advisory fee based on a percentage of the assets of that Public Fund or VA Fund, although this fee is eliminated with respect to a feeder fund in a master-feeder structure. ProFund Advisors is an affiliated person of the Trusts, within the meaning of Section 2(a)(3) of the Act.

[2] ProShares Trust, Investment Company Act Release No. 27394 (Jun. 13, 2006)("ETF Order").

ProShare Advisors LLC is a Maryland limited liability company, and has registered as an investment adviser under the Advisers Act. ProShare Advisors serves as investment adviser to the ETF Funds, and oversees the daily operations of the ETF Funds. Each ETF Fund is obligated to pay ProShare Advisors an investment advisory fee based on a percentage of the assets of each ETF Fund.

C. The Distributors

ProFunds Distributors, Inc. ("PDI") serves as the distributor for the Public Funds. PDI is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), and is a member of the National Association of Securities Dealers, Inc. ("NASD"). The distributor for the VA Funds is generally the relevant broker-dealer(s) affiliated or associated with the insurance company which enters into certain agreements with the Trusts.

SEI Investments Distribution Company, a broker-dealer registered under the Exchange Act and a member of the NASD, acts as the distributor and principal underwriter of the Creation Units of the ETF Funds ("SEI"). SEI distributes shares of the ETF Trust on an agency basis.

D. Other Service Providers

BISYS Fund Services Limited Partnership is the administrator for ProFunds and Access One Trust. BISYS Fund Services, Inc. serves as transfer agent and fund accounting agent for ProFunds and Access One Trust.

JPMorgan Chase Bank, N.A. and its affiliates act as custodian, administrator, fund accounting agent, index receipt agent and transfer agent for the ETF Trust.

E. The Funds of Funds

As defined earlier, the Funds of Funds will be registered management investment

companies or unit investment trusts that are not part of the same "group of investment companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Trusts. As such, the Funds of Funds exclude registered management investment companies that in the future may be part of the same "group of investment companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Trusts. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act and registered as an investment adviser under the Advisers Act or exempt from registration ("Fund of Funds Adviser"). A Fund of Funds Adviser may contract with an investment adviser which meets the definition of section 2(a)(20)(B) of the Act (a "Subadviser").

F. Proposed Transactions

Applicants propose allowing the Funds of Funds to invest in the Funds without limitation by the restrictions of Section 12(d)(1)(A) and (B) of the Act. Applicants also propose that the Fund of Funds be permitted to effect transactions in the Funds that would otherwise be prohibited by section 17(a) of the Act. The Funds will offer Funds of Funds simple and efficient investment vehicles to achieve their asset allocation or diversification objectives. The Funds also provide high-quality, professional investment program alternatives to Funds of Funds that do not have sufficient assets to operate comparable funds. Applicants will take steps to ensure that the Funds of Funds comply with any terms and conditions applicable to the requested relief by requiring that a Fund of Funds enter into a participation agreement between a Trust, on behalf of the relevant Funds, and the Funds of Funds ("Participation Agreement"), as a condition precedent to investing in a Fund beyond the limits imposed by Section 12(d)(1)(A). Any Fund of Funds that invests in a Fund would be required, under the Participation Agreement, to adhere

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

G. Disclosure

The Participation Agreement will further require each Fund of Funds that exceeds the 5% or 10% limitations in sections 12(d)(1)(A)(ii) and (iii) of the Act to disclose in its prospectus that it may invest in Funds, and to disclose, in "plain English," in its prospectus the unique characteristics of the Fund of Funds investing in the Funds, including but not limited to the expense structure and any additional expenses of investing in the Funds. Each Fund of Funds will comply with the disclosure requirements concerning the costs of investing in Funds set forth in Investment Company Act Release No. 27399.

III. LEGAL ANALYSIS

A. Section 12(d)(1) of the Act

1. Applicable Law

Section 12(d)(1)(A) of the Act prohibits, in relevant part, an investment company from acquiring shares of a registered investment company if the investment represents 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 other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale

will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

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. The legislative history of Section 12(d)(1)(J) indicates that when granting relief under Section 12(d)(1)(J), the Commission should consider, among other things, "the extent to which a proposed arrangement is subject to conditions that are designed to address conflicts of interest and overreaching by a participant in the arrangement, so that the abuses that gave rise to the initial adoption of the Act's restrictions against investment companies investing in other investment companies are not repeated."[3]

2. Basis for Relief Pursuant to Section 12(d)(1)(J)

Applicants agree to conditions, described at length herein, that adequately address the concerns underlying the applicable limits in Sections 12(d)(1)(A) and (B). As such, Applicants believe that the requested exemption is consistent with the public interest and the protection of investors. Applicants also submit that the proposed arrangements are consistent with Congressional intent that the Commission grant exemptions under Section 12(d)(1)(J) in a "progressive manner."[4]

Congress intended that the restrictions in Section 12(d)(1)(A) and (B) of the Act address certain abuses perceived to be associated with the pyramiding of investment companies,

[3] H.R. Rep. No. 622, 104th Cong., 2d Sess, at 43-44 (1996).

[4] Id. at 43-44.

including: (i) unnecessary duplication of costs (such as sales loads, advisory fees and administrative costs); (ii) diversification without any clear benefit; (iii) undue influence by a fund holding company over its underlying funds; (iv) the threat of large scale redemptions of the securities of the underlying investment companies; and (v) unnecessary complexity.[5] Applicants believe that the terms and conditions of this Application appropriately address the concerns that underlie Section 12(d)(1)(A) and (B).

i. Duplicative Fees and Expenses

The PPI Report found that all fund holding companies subject their investors to two layers of advisory fees.[6] The PPI Report also found that investors in load funds, including fund holding companies, must pay a sales charge, and that investors in a fund holding company are in turn subjected to a second layer of sales charges on their purchases of shares of the fund holding company.

Thus, the PPI Report found that layered costs of a fund holding company are significantly higher than the costs of an ordinary mutual fund.[7] As indicated in condition 11, with respect to registered separate accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Fund level, not both. With respect to other investments in a Fund of Funds, any sales

---

[5] See Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep No. 2337, 89th Cong., 2d Sess., 311-324 (1966) ("PPI Report").

[6] Id. At 318.

[7] Id. At 319-20.

charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

To the extent a Fund of Funds is used as an underlying investment for a variable insurance contract and is purchased by a separate account, the variable insurance contract holders will generally indirectly bear management fees and other expenses of the Fund of Funds and the Funds. In addition, contract holders will generally be charged fees under the variable insurance contract at the separate account level, which will generally include a portion covering administrative expenses, just as the contract holder would be charged if any other underlying fund were chosen. The administrative portion of the variable insurance contract's fees is generally designed to reimburse the life insurance company for maintaining variable insurance contract and participant level records and reporting, including tax reporting, customer services (including executing and tracking transfers and exchanges for the variable insurance contracts) and compliance with applicable insurance laws and regulations in all states, as well as federal securities and tax laws and regulations. Generally, these services directly affect variable insurance contract holders and, as such, are distinct from any fund administration charges at the Fund of Funds and Fund levels.

With respect to an investment by a registered separate account in a Fund of Funds, the aggregate of all fees and charges at all levels will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the applicable parties. This representation includes the fees and charges paid to a life insurance company that sponsors the registered separate account.

ii. Diversification

The PPI Report found that the diversification benefits for fund holding companies were "largely illusory."[8] Applicants submit that investment company shareholders can benefit realistically from asset allocations that allow investing in other investment companies, such as the Funds, which include both broad-based investment portfolios as well as more-narrowly tailored portfolios focusing on discrete market sectors. The PPI Report does not reflect the development of asset allocation funds, and it does not reflect current investing approaches to constructing personal investment portfolios consisting of several types of mutual funds.

iii. Undue Influence

Pyramiding of control is another potential abuse of fund holding company structures discussed in the PPI Report. The PPI Report expressed concern over the potential concentration of voting control in a fund holding company with respect to its underlying funds. The PPI Report also expressed concern that sizeable share percentage ownership by one fund in another presents management of underlying funds with an omnipresent threat of lost advisory fees when large redemptions may occur.

Condition 1 contains measures designed to limit the control that a Fund of Funds may have over a Fund. Condition 1 prohibits the Fund of Funds Adviser or Investing Trust sponsor ("Sponsor"), any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for Sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor ("Fund of Funds Advisory Group") from controlling

[8] Id. At 320

(individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The same prohibition would apply to the Subadviser, any person controlling, controlled by or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by or under common control with the Subadviser ("Subadviser Group").

In addition, Condition 2 addresses concerns about the potential influence that a Fund of Funds, or a Fund of Funds Affiliate, might have over services or transactions between a Fund of Funds Affiliate and a Fund or a Fund Affiliate. For purposes of this Application, as addressed later in Condition 2, a "Fund of Funds Affiliate" is defined as a Fund of Funds Adviser, Subadviser, a Sponsor, a promoter, or a principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is defined as an investment adviser, sponsor, promoter or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

The Commission historically has raised concerns about potential conflicts of interests inherent in the fund holding company structure. Conditions 2 through 7 were specifically designed to address the potential for a Fund of Funds and certain affiliates of a Fund of Funds to exercise undue influence over a Fund and certain of its affiliates. For purposes of this Application, as addressed later in Conditions 5, 6 and 7, an "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member

---

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

iv. Threat of Large-Scale Redemptions

The PPI Report expresses concern about the impact that the threat of large-scale redemptions may have on the orderly management of an underlying fund. In response to this concern, Applicants first submit that the Funds are designed and managed to accommodate large scale redemptions and high levels of shareholder transaction activity (other than the Access High Yield Fund). As such, vulnerability to large-scale redemptions is significantly lessened. The ETF Funds are redeemable directly from the ETF Funds only in Creation Units and only through Authorized Participants. Applicants believe that most investors seeking to sell ETF Funds, therefore, would sell their shares in the secondary market, not directly to the ETF Funds. Since secondary market trading activity occurs away from the ETF Funds, the portfolio management of an ETF Fund would not be disrupted or even affected by shareholders' selling activities in the secondary market. Second, Applicants submit that it is in the best interests of a Fund of Funds to avoid placing the Funds' portfolio management in a disadvantageous position. Moreover, the Funds understand the implications of investments by a Fund of Funds, including any potential

for large-scale redemptions. As a final note, the prospectus of each series of the Trust discloses that a Fund may choose to reject a purchase order at the discretion of the Fund.[9]

v. Complex Structures

Finally, the PPI Report expresses concern that the popularity of Funds of Funds could lead to the creation of more complex vehicles that would not serve any meaningful purpose.[10] In the case of those Funds that operate using a master-feeder structure, having a Fund of Funds as an investor could result in a three-tier arrangement (a Fund of Funds investing in a Fund feeder fund investing in a master fund). However, Applicants do not believe this will result in an overly complex structure. The master-feeder arrangement, while offering some tax and accounting benefits to shareholders, is for all other purposes entirely transparent. For any investor, whether a Fund of Funds or any other investor, an investment in a Fund feeder fund would be no different than investing in a Fund that does not use a master-feeder arrangement. In addition, Condition 12 was designed to address concerns over meaninglessly complex arrangements.

B. Section 17(a) and 17(b) and Section 6(c) of the Act

The Applicants also request that the Commission issue an order pursuant to Section 17(b) of the Act exempting them from the provisions of Section 17(a) of the Act to the extent necessary to permit the proposed investments by Funds of Funds in shares of the Funds.[11]

---

[9] To the extent that a Fund of Funds purchases shares of an ETF Fund in the secondary market, a Fund may not be able to reject specific purchases. However, an ETF Fund would still be able to reject purchases of shares in Creation Units directly from the ETF Fund. Moreover, as a general matter, an ETF Fund would still retain its ability to reject purchases of its shares by a Fund of Funds through its decision to enter the Participation Agreement prior to any investment by the Fund of Funds in excess of the limits of Section 12(d)(1)(A).

[10] Id. at 321.

[11] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of a Fund or (b) an affiliated person

1. Applicable Law

Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

Section 2(a)(3) of the Act defines the term "affiliated person" of another person, in relevant part, as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; [and] (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person...

Because a Fund of Funds relying on the requested order could potentially own more than 5% of the outstanding voting securities of a Fund, the Fund could be deemed to be an affiliated person of the Fund of Funds, and vice versa. If categorized in this manner, the sale of shares by a Fund to a Fund of Funds or redemption of shares by a Fund from a Fund of Funds may be deemed to contravene Section 17(a) due to the affiliated status of these participants to such a transaction.[12]

---

of a Fund, or an affiliated person of such person, for the sale by the Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement will also include this acknowledgement.

[12] To the extent that purchases and sales of shares of an ETF Fund occur in the secondary market and not through principal transactions directly between a Fund of Funds and an ETF Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of shares in Creation Units by an ETF Fund to a Fund of Funds and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions as described in the application for the ETF Order.

Section 17(b) of the Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of Section 17(a) if evidence establishes that:

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and

(3) 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. Because multiple transactions could occur between a Fund and a Fund of Funds, and because the Commission may interpret its authority under Section 17(b) as extending only to a single transaction and not a series of transactions, Applicants are also seeking relief pursuant to Section 6(c) with respect to any transaction or series of transactions after a Fund of Funds owns 5% or more of the outstanding voting shares of a Fund.

2. Basis for a Section 17(b) Order and a Section 6(c) Order

Applicants submit that the terms of the sale of shares by a Fund to a Fund of Funds, and the purchase of the shares by a Fund from a Fund of Funds through redemptions, including the consideration to be paid or received, are reasonable and fair, and do not involve overreaching. Section 17(a) is intended to prohibit certain affiliated persons in a position of influence over an investment company from furthering their own interests by selling property that they own to an

investment company at an inflated price, purchasing property from an investment company at less than its fair value, or selling or purchasing property on terms that involve overreaching by an affiliated person. Shares of the series of the Trust will be issued and redeemed at their net asset values as required by Rule 22c-1 under the Act. Any Fund of Funds that purchases or redeems shares of a Fund through transactions directly with the Fund will do so at net asset value per share, which is the same consideration paid and received for these shares by any other investor purchasing or redeeming such shares in principal transactions. Further, no Fund of Funds is compelled to invest in a Fund; each series of the Trusts reserves the right to reject any purchase order or discontinue selling its shares.[13] Accordingly, there will be no opportunity or incentive on the part of any party involved in the transactions to overreach or allow overreaching.

Applicants also submit that the proposed arrangements will be consistent with the policies of each Fund and each Fund of Funds. As noted above, shares of series of the Trusts will be issued and redeemed by a Fund of Funds on the same basis, and in accordance with the same policies, as shares held by any other investor. Further, any investment by a Fund of Funds in shares of the Funds and the issuance of shares by a Fund to a Fund of Funds will be effected in accordance with the investment restrictions of the Fund and the Fund of Funds, and will be consistent with the investment objectives and policies of each Fund of Funds. The Participation Agreement will require any Fund of Funds that purchases shares from a Fund to represent that the purchase of shares from the Fund by a Fund of Funds will be accomplished in compliance with the investment restrictions of the Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement.

---

[12] See footnote 8.

Finally, in light of the above, Applicants submit that the proposed transactions are appropriate in the public interest, consistent with the protection of investors, and consistent with the policies and provisions of the Act.

IV. PRECEDENT

The Commission has previously granted exemptive orders to other applicants who sought relief for similar Funds of Funds structures and investments, and whose request for relief included conditions substantially similar to those included in this Application. See, e.g., Nuveen Investments, et al., Investment Company Act Release Nos. 24892 (Mar. 13, 2001)(notice) and 24930 (Apr. 6, 2001)(order); PADCO Advisers, Inc., et al., Investment Company Act Release Nos. 24678 (Oct. 5, 2000)(notice) and 24722 (Oct. 31, 2000)(order); Seasons Series Trust, et. al., Investment Company Act Release Nos. 24646 (Sept. 19, 2000)(notice) and 24693 (Oct. 17, 2000)(order); iShares Trust et al., Investment Company Act Release Nos. 25969 (March 21, 2003) (notice) and 26006 (April 15, 2005) (order).

V. APPLICANTS' CONDITIONS

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

1. The members of a Fund of Funds Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds Advisory Group or the Subadviser Group, each in the aggregate,

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

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

3. The board of directors or trustees of an Investing Management Company, including a majority of the directors or trustees who are not "interested persons" (within the meaning of Section 2(a)(19) of the Act) ("Disinterested Trustees"), will adopt procedures reasonably designed to assure that the Fund of Funds Adviser and any Subadviser are

conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

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

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

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

review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Open-end Fund. The Board of the Open-end Fund will consider, among other things, (i) whether the purchases were consistent with the investment objectives and policies of the Open-end Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-end Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Open-end Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. The Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in Section 12(d)(1)(A), the Fund of Funds and the Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Open-end Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. A Fund of Funds Adviser or trustee or Sponsor of a Fund of Funds, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end Fund

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

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

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

VI. PROCEDURAL MATTERS

Applicants file this Application in accordance with Rule 0-2 under the Act, and state that their address is printed on the Application's facing page. Applicants request that all written communications concerning the Application be directed to the person and address printed on the Application's facing page. Also, Applicants have attached as exhibits to the Application the required verifications and proposed notice of application.

Pursuant to Rule 0-2(c) under the Act, ProFund Advisors and ProShare Advisors hereby state that the undersigned officer of the Advisers is fully authorized to execute and file this Application pursuant to authority set forth in each Adviser's operating agreement, and that all requirements for the execution and filing of this Application in the name of the Advisers have been taken.

The Board of Trustees of ProFunds adopted the following resolution on September 24, 2002, which remains in effect:

> **RESOLVED**, that any officer of the Trust be, and each such officer hereby is, authorized, empowered and directed to prepare, execute and submit for filing with the SEC an application for a conditional order of exemption under Section 6(c), 12(d)(1)(J) and 17(b) of the 1940 Act, and Rule 17d-1 thereunder, from the provisions of Sections 12(d)(1)(A), 12(d)(1)(B), 17(a) and 17(d) of the 1940 Act, and Rule 17d-1 thereunder, and such other or different Sections of the 1940 Act and Rules thereunder as any such officer deems to be necessary and appropriate to permit investment companies to invest in series of the Trust in accordance with, and as more fully described in, the application, and to prepare, execute and submit for filing such amendments thereto, and to take such further actions, as such officer deems necessary and appropriate to render effective and otherwise fully carry out the intent and purposes of this resolution.

The Board of Trustees of Access One Trust adopted the following resolution on July 13, 2005, which remains in effect:

> **RESOLVED**, that any officer of the Trust be, and each such officer hereby is, authorized, empowered and directed to prepare, execute and submit for filing with the SEC an application for a conditional order of exemption under Section 6(c), 12(d)(1)(J) and 17(b) of the 1940 Act, and Rule 17d-1 thereunder, from the provisions of Sections 12(d)(1)(A), 12(d)(1)(B), 17(a) and 17(d) of the 1940 Act, and Rule 17d-1 thereunder, and such other or different Sections of the 1940 Act and Rules thereunder as any such officer deems to be necessary and appropriate to permit investment companies to invest in series of the Trust in accordance with, and as more fully described in, the application, and to prepare, execute and submit for filing such amendments thereto, and to take such further actions, as such officer deems necessary and appropriate to render effective and otherwise fully carry out the intent and purposes of this resolution.

The initial Trustees of ProShares Trust adopted the following resolution on July 13, 2005, which remains in effect:

> **RESOLVED**, that any officer of the Trust be, and each such officer hereby is, authorized, empowered and directed to prepare, execute and submit for filing with the SEC an application for a conditional order of exemption under Section 6(c), 12(d)(1)(J) and 17(b) of the 1940 Act, and Rule 17d-1 thereunder, from the provisions of Sections 12(d)(1)(A), 12(d)(1)(B), 17(a) and 17(d) of the 1940 Act, and Rule 17d-1 thereunder, and such other or different Sections of the 1940 Act and Rules thereunder as any such officer deems to be necessary and appropriate to permit investment companies to invest in series of the Trust in accordance with, and as more fully described in, the application, and to prepare, execute and submit for filing such amendments thereto, and to take such further actions, as such officer deems necessary and appropriate to render effective and otherwise fully carry out the intent and purposes of this resolution.

Pursuant to Rule 0-2(c) under the Act, the Trusts hereby state that the undersigned officer is fully authorized to execute and file this Application pursuant to authority set forth in each Trust's declaration of trust and that all requirements for the execution and filing of this Application in the name of the Trusts have been taken.

In accordance with Rule 0-5 under the Act, Applicants request that the Commission issue the requested order without holding a hearing.

VII. CONCLUSION AND SIGNATURES

Based on the facts, analysis, and conditions in the Application, Applicants respectfully request that the Commission issue an order under Section 6(c), 12(d)(1)(J), and 17(b) of the Act granting the relief requested by the Application.

Date: December 14, 2006

ProFund Advisors LLC
ProShare Advisors LLC

By: _____
Michael L. Sapir
Chief Executive Officer

ProFunds
Access One Trust
ProShares Trust

By: _____
Steven G. Cravath
Secretary

Exhibit Index

Exhibit	Exhibit Name	Sequential Page
A	Verifications	31
B	Draft *Federal Register* Notice	33

Exhibit A

Verification

(STATE OF MARYLAND)

(COUNTY OF MONTGOMERY)

The undersigned, being duly sworn, deposes and says that he has duly executed the attached Application for an on behalf of ProFund Advisors LLC and ProShare Advisors LLC, that he is Chief Executive Officer of ProFund Advisors LLC and ProShare Advisors LLC, and is authorized to sign the Application on its behalf, and that all action by shareholders, trustees and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By: _____
Michael L. Sapir
Chief Executive Officer
ProFund Advisors LLC
ProShare Advisors LLC

Subscribed and sworn to before
me this 14 th day of December, 2006.

A. Michelle Singleton
Notary Public
My Commission expires: 6/16/2010

A. MICHELLE SINGLETON
Notary Public-Maryland
Montgomery County
My Commission Expires
June 16, 2010

Exhibit A

Verification

(STATE OF MARYLAND)

(COUNTY OF MONTGOMERY)

The undersigned, being duly sworn, deposes and says that he has duly executed the attached Application for and on behalf of ProFunds, Access One Trust and ProShares Trust, that he is Secretary of ProFunds, Access One Trust and ProShares Trust and is authorized to sign the Application on their behalf, and that all action by shareholders, trustees and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument and its contents, and that the facts therein set forth are true to the best of his knowledge, information and belief.

By:_____
Steven G. Cravath
Secretary
ProFunds
Access One Trust
ProShares Trust

Subscribed and sworn to before
me this 14th day of December, 2006.

A. Michelle Singleton
Notary Public
My Commission expires: 6/16/2010

A. MICHELLE SINGLETON
Notary Public-Maryland
Montgomery County
My Commission Expires
June 16, 2010

Exhibit B

SECURITIES AND EXCHANGE COMMISSION
ProFunds, et al.

Notice of Application

[Release No. - ; File No. 812-13029]

[_____, 2006]

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, as amended (the "Act"), for exemption from Section 12(d)(1)(A) and (B), 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 to permit certain registered management investment companies to acquire shares of other registered open-end management investment companies outside the same group of investment companies.

Applicants: ProFunds, Access One Trust, ProShares Trust, ProFund Advisors LLC and ProShare Advisors LLC.

Filing Dates: The application was filed on October 6, 2003 and amended on June 3, 2004, July 14, 2005, October 6, 2006 and December 15, 2006.

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 _____, 2006, 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, N.E., Washington, D.C. 20549. Applicants: 7501 Wisconsin Ave., Suite 1000, Bethesda, MD 20814. Copies to: John Loder, Esq., Ropes & Gray, One International Place, Boston, MA 02110-2624 and Stuart M. Strauss, Esq., Clifford Chance US LLP, 200 Park Avenue, New York, NY 10166-0153

For Further Information Contact: Michael W. Mundt, Senior Special Counsel, at (202) 942-0578, Office of Investment Company Regulation, Division of Investment Management, at (202) 942-0564.

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 Branch, 100 F Street, N.E., Washington, D.C. 20549-0102 (tel. 202-942-8090).

Applicants' Representations:

1. ProFunds, Access One Trust, ProShares Trust ("ETF Trust") (together, the "Trusts") are registered as an open-end management investment companies under the Act, each comprising separate series (each a "Fund" and collectively the "Funds"), each of which pursues a distinct set of investment objectives and strategies. ProFund Advisors LLC and ProShare Advisors LLC are Maryland limited liability companies (together "Advisers"). ProFund Advisors is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"), and serves as investment adviser to ProFunds and Access One Trust. ProShare Advisors LLC is registered as an investment adviser under the Advisers Act and is the investment adviser to the ProShares Trust.

2. Applicants request that the relief apply to: (1) each open-end management investment company and unit investment trust that currently or subsequently is part of the same "group of investment companies," within the meaning of Section 12(d)(1)(G)(ii) of the Act, as the Funds and is advised by the Advisers or any entity controlling, controlled by, or under common control with the Advisers (together "Funds"); (2) each Fund of Funds that enters into a Participation Agreement with a Fund to purchase shares of the Funds without limitation by the restrictions of Section 12(d)(1) of the Act;[1] and (3) any principal underwriter to a Fund or broker or dealer selling shares of a Fund.

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

Applicants' Legal Analysis:

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits an investment company from acquiring shares of a registered investment company if the investment represents 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 from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

---

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

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) to permit Funds of Funds to acquire shares of the Funds and to permit the Funds to sell shares to the Funds of Funds beyond the limits set forth in Section 12(d)(1)(A) and (B).

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

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over the Funds. To limit the control that a Fund of Funds may have over a Fund, Applicants propose a condition prohibiting any investment adviser of a Fund of Funds ("Fund of Funds Adviser") and certain affiliates (individually or in the aggregate) from controlling a Fund within the meaning of Section 2(a)(9) of the Act. To limit further the potential for undue influence over Funds, Applicants propose Conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of a Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that a Fund of Funds understands the implications of an investment by a Fund of Funds under the requested order, each Fund of Funds and the Trust will execute a Participation Agreement as a condition precedent to investing in a Fund. A Participation Agreement will state that the board of directors or trustees of the Fund of Funds and the Fund of Funds Adviser understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that the prospectus of each series of the Trust discloses that the Fund may choose to reject a purchase order, in whole or in part, at the discretion of the Fund.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Fund of Funds, including a majority of the directors or trustees who are not "interested persons" of the Fund of Funds, will be required to determine that the advisory fees charged to the Fund of Funds are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Fund in which the Fund of Funds may invest. In addition, a Fund of Funds Adviser 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 a plan adopted by a Fund under Rule 12b-1 under the Act) received by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser from the Funds in connection with the investment by the Fund of Funds in the Funds. Applicants also state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

7. Applicants state that the proposed arrangement will not create an overly complex

fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in Section 12(d)(1)(A), except to the extent permitted by Section 12(d)(1)(E) of the Act[2] or pursuant to an exemptive order. Applicants also represent that the Participation Agreement will require that a Fund of Funds' prospectus and sales literature disclose, in "plain English," the unique characteristics of a Fund of Funds investing in the Funds, including, but not limited to, the expense structure and any additional expenses of investing in the Funds.

B. Section 17(a)

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

2. Applicants state that a Fund could become an affiliated person of a Fund of Funds if the Fund of Funds acquires more than 5% of a Fund's outstanding voting securities. In light of this possible affiliation, Section 17(a) could prevent a Fund from selling shares to and redeeming shares from the Fund of Funds.

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, including the consideration to be paid or received, 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 arrangement satisfies the standards for relief under Sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Shares of the series of the Trust will be issued and redeemed at their net asset values as required by Rule 22c-1 under the Act. Any Fund of Funds that purchases or redeems shares of the Trusts will do so at net asset value per share, which is the same consideration paid and received for these shares by any other investor purchasing shares of the Trusts in principal transactions.

---

[2] The Money Market ProFund operates as a "feeder fund" that invests all of its investable assets in another investment company (the "master fund") in reliance on Section 12(d)(1)(E) of the Act. The Access Money Market Fund may operate as a feeder fund in the future.

Applicants' Conditions:

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

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

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

3. The board of directors or trustees of an Investing Management Company, including a majority of the directors or trustees who are not "interested persons" (within the meaning of Section 2(a)(19) of the Act) ("Disinterested Trustees"), will adopt procedures reasonably designed to assure that the Investing Management Company Fund of Funds Adviser and any Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Open-end Fund ("Board"), including a majority of the Disinterested Trustees, will determine that any consideration paid by the Open-end Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-end Fund; (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the

part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

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

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

7. The Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Open-end Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Open-end Fund were made.

8. Before investing in a Fund in excess of the limits in Section 12(d)(1)(A), the Fund of Funds and the Fund will execute a Participation Agreement stating, without limitation, that their board of directors or trustees and their investment advisers, or sponsors or trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Open-end Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Open-end Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a

copy of the order, the agreement and, in the case of an Open-end Fund, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

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

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

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

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

_____

Secretary