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Dated at Rockville, Maryland, this 13th day of December 2006.

For the Nuclear Regulatory Commission.

**Alan B. Wang,**

*Project Manager, Plant Licensing Branch IV,  
Division of Operating Reactor Licensing,  
Office of Nuclear Reactor Regulation.*

[FR Doc. E6-21673 Filed 12-19-06; 8:45 am]

**BILLING CODE 7590-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection: Comment Request for Review of New Information Collection Form: OPM Optional Form XX

**AGENCY:** U.S. Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a new information collection document. Optional Form (OF) XX, Certificate of Medical Examination replaces the existing Civil Service Commission Standard Form (SF) 78, Certificate of Medical Examination, which was last revised in October 1969. Replacement is necessary because the SF-78 is no longer accurate. Revisions include making the form optional for agencies, incorporating changes required by 29 CFR 1630.13, which addresses prohibited medical examinations and inquiries, and deleting references to the Federal Personnel Manual and other outdated references.

It will be used to collect medical information about individuals who are incumbents of positions which require physical fitness/agility testing and medical examinations, or who have been selected for such a position contingent upon meeting physical fitness/agility testing and medical examinations as a condition of their employment. This information is needed to ensure fair and consistent treatment of employees and job applicants, to adjudicate requests to pass over preference eligibles, and to adjudicate claims of discrimination

under the Americans with Disabilities Act (ADA).

Approximately 45,000 forms are submitted annually. It takes approximately 30 total minutes to complete the form. The annual estimated burden is 22,500 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology;
- Ways we can enhance the quality, utility and clarity of the information collected; and
- Ways we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, Fax (202) 418-3251, or e-mail to [mbtoomey@opm.gov](mailto:mbtoomey@opm.gov). Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—J. C. Phillip Spottswood, J.D., M.P.H. by telephone at (202) 606-1389, by TTY at (202) 418-3134; by fax at (202) 606-0864; or by e-mail at [phil.spottswood@opm.gov](mailto:phil.spottswood@opm.gov).

**Linda M. Springer,**

*Director, U.S. Office of Personnel  
Management.*

[FR Doc. E6-21647 Filed 12-19-06; 8:45 am]

**BILLING CODE 6325-39-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No.  
27598; 812-13133]**

### Members Mutual Funds, et al.; Notice of Application

December 13, 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 ("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:** The order would permit certain 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 and outside the same group of investment companies.

**Applicants:** MEMBERS Mutual Funds ("MMF"), ULTRA Series Fund ("USF") (each a "Trust", and together, the "Trusts"), Members Capital Advisors, Inc. ("MCA"), and CUNA Mutual Life Insurance Company ("CUNA Mutual") (collectively, the "Applicants"). 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 part of the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and are, or may in the future be, advised by MCA or any other investment adviser controlling, controlled by, or under common control with MCA (together with the existing series of the Trusts, the "Funds").

**FILING DATES:** The application was filed on October 29, 2004 and amended on March 24, 2006 and December 6, 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 January 8, 2007, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants: CUNA Mutual Group, 5910 Mineral Point Road, Madison, Wisconsin 53701-0391.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551-6876, or Nadya Roytblat, Assistant Director, 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 for a fee at the Commission's Public Reference Desk,

100 F Street, NE., Washington, DC  
20549-0102 (telephone (202) 551-5850).

### Applicants' Representations

1. CUNA Mutual is a life insurance company organized under the laws of Iowa. Through separate accounts ("Separate Accounts") registered under the Act as UITs (the "Registered Separate Accounts") and a separate account not registered under the Act (the "Unregistered Separate Account"), CUNA Mutual issues group and individual variable annuity contracts and variable life insurance policies (the "Variable Contracts") which offer the owners of such contracts the opportunity to indirectly invest in USF.

2. MMF is a statutory trust organized under the laws of Delaware and USF is a business trust organized under the laws of Massachusetts. Both Trusts are registered under the Act as open-end management investment companies. MMF and USF currently offer twelve and thirteen separate Funds, respectively. MCA, an Iowa corporation, is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

3. Applicants request relief to permit (a) a Fund (a "Fund of Funds") to acquire shares of registered open-end management investment companies that are not part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii) of the Act) as the Fund of Funds (the "Unaffiliated Underlying Funds"), (b) the Fund of Funds to acquire shares of UITs that are not part of the same group of investment companies as the Fund of Funds (the "Unaffiliated Underlying Trusts"), (c) the Unaffiliated Underlying Funds and Trusts (collectively, the "Unaffiliated Funds") to sell their shares to the Fund of Funds, (d) the Fund of Funds to acquire shares of certain other Funds in the same group of investment companies as the Fund of Funds (the "Affiliated Funds," and together with the Unaffiliated Funds, the "Underlying Funds") and (e) the Affiliated Funds to sell their shares to the Fund of Funds. Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares be listed and traded on a national securities exchange at negotiated prices ("ETFs"). Each Fund of Funds also may invest in other securities and financial instruments. Applicants state that a Fund of Funds will provide an efficient and simple method of allowing investors to create a comprehensive asset allocation program.

### 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) to permit the Funds of Funds to acquire shares of the Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (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) MCA and any person controlling, controlled by or under common control with MCA, 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 MCA or any person controlling, controlled by or under common control with MCA (collectively, the "Group"), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act ("Sub-Adviser") to a Fund of Funds, any person controlling, controlled by or under common control with the Sub-Adviser, 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 by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, the "Sub-Adviser Group") will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds and MCA, any Sub-Adviser, 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, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Sub-Adviser, 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.<sup>1</sup>

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 ("Disinterested 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 MCA 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 MCA, or an affiliated person of MCA, other than any advisory fees paid to MCA or an affiliated person of MCA by the Unaffiliated 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, ("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 Rule 2830.<sup>2</sup>

9. 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 affiliated investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions. Applicants also represent that a Fund of Funds' prospectus and sales literature will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the proposed Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.<sup>3</sup>

#### 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

<sup>2</sup> 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 CUNA Mutual and CUNA Mutual Insurance Society or any other insurance company controlling, controlled by, or under common control with CUNA Mutual.

<sup>3</sup> Each Fund of Funds also will comply with the disclosure requirements concerning the aggregate expenses of investing in Underlying Funds set forth in Investment Company Act Release No. 27399.

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 might be deemed to be under common control of MCA and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds might 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.<sup>4</sup>

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. 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

<sup>4</sup> 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 a Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

<sup>1</sup> An Unaffiliated 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.<sup>5</sup> 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.

#### 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 the Sub-Adviser 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 the Sub-Adviser 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 Sub-Adviser Group (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) 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 the Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser 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 as the sponsor (in the case of an Unaffiliated Underlying Trust).

A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Fund 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 Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated 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 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 Disinterested Trustees, will adopt procedures reasonably designed to assure that MCA and any Sub-Adviser 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 Disinterested 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 Disinterested 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 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 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 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

<sup>5</sup> 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 at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. A Fund of Funds could seek to transact in "Creation Units" directly with an ETF pursuant to the requested section 17(a) relief.

Unaffiliated Underlying Fund were made.

8. Prior to its investment in shares of an Unaffiliated Underlying Fund in excess of the limit 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 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 Disinterested 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. MCA 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 MCA, or an affiliated person of MCA, other than any advisory fees paid to MCA or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by

the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Underlying Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser 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 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 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 affiliated 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.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-21656 Filed 12-19-06; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54936; File No. S7-24-89]

**Joint Industry Plan; Notice of Filing and Effectiveness of Amendment No. 18 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, Submitted by the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the National Stock Exchange, Inc., the Nasdaq Stock Market LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.**

December 14, 2006.

### I. Introduction and Description

Notice is hereby given that on December 13, 2006, the operating committee ("Operating Committee" or "Committee")<sup>1</sup> of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan pursuant to Rule 608 under the Securities Exchange Act of 1934 (the "Act")<sup>2</sup>. This amendment represents Amendment 18 made to the Plan and reflects the modification of the Access Section to be consistent with Rule 610 of Regulation NMS.<sup>3</sup> Amendment 18 was unanimously approved by the Committee on August 17, 2006.<sup>4</sup> The Commission is publishing this notice of filing and effectiveness to solicit comments from

<sup>1</sup> The Plan Participants (collectively, "Participants") are: the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), the National Association of Securities Dealers, Inc. ("NASD"), the National Stock Exchange, Inc. ("NSX"), the Nasdaq Stock Market LLC ("Nasdaq"), NYSE Arca, Inc. ("NYSEArca"), and the Philadelphia Stock Exchange, Inc. ("Phlx").

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> 17 CFR 242.610.

<sup>4</sup> See letter from Bridget M. Farrell, Chairman, OTC/UTP Operating Committee, to Nancy M. Morris, Secretary, Commission, dated December 12, 2006.