

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Rule 204-2" (17 CFR 275.204-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1). Rule 204-2 sets forth the requirements for maintaining and preserving specified books and records. The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. The respondents to the collection of information are investment advisers registered with us. The Commission staff estimates that the total reporting and recordkeeping burden of the collection of information for each respondent is approximately 181.1541 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: October 30, 2007.

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-21763 Filed 11-5-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 20840; 812-13376]

### MyShares Trust, et al.; Notice of Application

October 31, 2007.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY:** Applicants request an order that would permit: (a) Series of open-end management investment companies, to issue shares ("Shares") that can be redeemed only in large aggregations ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated prices on a national securities exchange as defined in section 2(a)(26) of the Act (each an "Exchange"); (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

*Applicants:* MyShares Trust (the "Trust"); MyShares, LLC (the "Advisor"); and Foreside Fund Services, LLC (the "Distributor").

*Filing Dates:* The application was filed on April 9, 2007, and amended on September 6, 2007 and October 31, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 26, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, MyShares Trust and MyShares, LLC, c/o MyShares, LLC, 210 Summit Avenue, Suite C11, Montvale, NJ 07645, and Foreside Fund Services, LLC, Two Portland Square, Portland, ME 04101.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel at (202) 551-6990, or Julia Kim Gilmer, Branch Chief, at (202) 551-6871 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102, telephone (202) 551-5850.

### Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and organized as a Delaware statutory trust. The Trust will initially offer four series ("Initial Funds").<sup>1</sup> The Trust may offer additional investment companies in the future as well as additional series of any existing open-end investment company registered under the Act ("Future Funds").<sup>2</sup>

2. The Advisor is registered as an "investment adviser" under the Investment Advisers Act of 1940, as amended (the "Advisers Act") and will serve as the investment adviser to each of the Initial Funds. The Advisor intends to enter into sub-advisory agreements with Northern Bank and Trust Company ("Initial Sub-Advisor"), to act as sub-advisor to the Initial Funds and may in the future enter into additional agreements with one or more sub-advisors with respect to Future Funds (all such sub-advisors collectively referred to as "Sub-Advisor"). The Initial Sub-Advisor for

<sup>1</sup> The Initial Funds are: MyShares ISE Homebuilders Index Fund; MyShares ISE SINDEX Fund; MyShares ISE-CCM Homeland Security Index Fund; and MyShares ISE-REVERE Wal-Mart Suppliers Index Fund.

<sup>2</sup> References to "Fund(s)" include the Initial Funds and the Future Funds. All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. Any Future Fund will be advised by the Advisor or an entity controlled by or under common control with the Advisor.

the Initial Funds is registered under the Advisers Act; any future Sub-Advisor to a Fund will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"), and will act as distributor and underwriter of the Creation Units of Shares. The Distributor is not affiliated with the Advisor or the Initial Sub-Advisor.

3. Each Fund will hold certain equity securities ("Portfolio Securities") selected to correspond generally to the price and yield performance, before fees and expenses, of a specified equity securities index (an "Underlying Index"). Certain of the Underlying Indices are composed of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets ("Domestic Indices"). Other Underlying Indices may be composed of foreign equity securities ("Foreign Indices"). Funds which track Domestic Indices are referred to as "Domestic Funds" and Funds which track Foreign Indices are referred to as "Foreign Funds." No entity that creates, compiles, sponsors or maintains an Underlying Index ("Index Provider") is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust or a Fund, of the Advisor, of any Sub-Advisor to or promoter of a Fund, or of the Distributor.

4. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a "replication strategy" or "representative sampling" which will be disclosed with regard to each Fund in its prospectus.<sup>3</sup> A Fund using a "replication strategy" generally will invest in all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. In certain circumstances, such as when there are

<sup>3</sup> Applicants represent that a Fund will normally invest at least 90% of its total assets in the component securities that comprise its Underlying Index ("Component Securities") or, in the case of Foreign Funds, Component Securities and depositary receipts representing such securities. "Depositary Receipts" will typically be American Depositary Receipts, but may include Global Depositary Receipts and Euro Depositary Receipts. Each Fund also may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Advisor or Sub-Advisor believes will help the Fund track its Underlying Index.

practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is illiquid, a Fund may use a "representative sampling" strategy pursuant to which it will invest in some, but not all of the relevant Component Securities.<sup>4</sup> Applicants anticipate that a Fund that utilizing a "representative sampling" strategy will not track the price and yield performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Creation Units are expected to range between 15,000 to 200,000 Shares as will be clearly stated in the relevant Fund's prospectus ("Prospectus"). Applicants expect that the initial price of a Creation Unit will fall in the range of \$1,000,000 to \$10,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor ("Authorized Participant"). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the Commission; or (b) a participant in the Depository Trust Company ("DTC", and such participant, "DTC Participant"). Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor or Sub-Advisor to correspond generally to the price and yield performance of the relevant Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment ("Balancing Amount").<sup>5</sup> The Balancing Amount is an amount equal to the difference between (a) the net asset value ("NAV") (per Creation Unit) of the Fund and (b) the total aggregate market value (per Creation Unit) of the Deposit Securities.<sup>6</sup> Each

<sup>4</sup> Under the "representative sampling" strategy, the Advisor or Sub-Advisor will seek to construct a Fund's portfolio so that its investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

<sup>5</sup> The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to as a "Portfolio Deposit."

<sup>6</sup> Each Fund will sell and redeem Creation Units only on a "Business Day" which is defined as any

Fund reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.<sup>7</sup> The maximum Transaction Fees relevant to each Fund will be fully disclosed in the Fund's Prospectus, and the method for calculating the Transaction Fees will be disclosed in each Fund's Prospectus or statement of additional information ("SAI"). Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Funds. The Distributor also will be responsible for delivering the Fund's Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Fund to implement the delivery of Shares.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. If the American Stock Exchange LLC or the New York Stock Exchange LLC is the listing Exchange, it is expected that one or more member firms of such Exchange will be designated to act as a specialist and maintain a market on the Exchange for Shares trading on the Exchange ("Specialist"). If NYSE Arca, Inc. or NYSE Arca Marketplace, LLC (collectively, "NYSE Arca") is the listing Exchange, it is expected that one or more of the market makers that are

day that the New York Stock Exchange, the Exchange, the Fund and the Custodian are open for business and includes any day that a Fund is required to be open under section 22(e) of the Act. In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each Business Day, the Balancing Amount effective as of the previous Business Day, per outstanding Share, will be made available. Any Exchange on which Shares are listed will disseminate, every 15 seconds, during its regular trading hours, through the facilities of the Consolidated Tape Association, an amount per Share representing the sum of the estimated Balancing Amount plus the current value of the Deposit Securities, on a per Share basis.

<sup>7</sup> Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

members of NYSE Arca ("Arca Market Makers") will register to make a market in Shares listed on NYSE Arca. If The NASDAQ Stock Market, Inc. ("NASDAQ") is the listing Exchange, one or more member firms of NASDAQ will act as a market maker ("NASDAQ Market Maker") and maintain a market on NASDAQ for Shares trading on NASDAQ.<sup>8</sup> Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist, or Market Makers, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.<sup>9</sup> Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

8. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit redemptions ("Fund Securities") on the date that the request for redemption is submitted, which may not be identical to the Deposit Securities required to purchase Creation Units on

that date,<sup>10</sup> and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ from the Balancing Amount if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy.

9. No Fund will be marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an "ETF," an "investment company," a "fund," or a "trust." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on the Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

#### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the

purposes fairly intended by the policy and provisions of the Act.

#### Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

#### Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal

<sup>8</sup> If Shares are listed on the NASDAQ, no particular NASDAQ Market Maker will be contractually obligated to make a market in Shares, although NASDAQ's listing requirements stipulate that at least two NASDAQ Market Makers must be registered in Shares to maintain the listing. Applicants state that registered Arca Market Makers and NASDAQ Market Makers (collectively, "Market Makers") are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

<sup>9</sup> Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

<sup>10</sup> As a general matter, the Deposit Securities and Fund Securities will correspond *pro rata* to the Portfolio Securities held by each Fund, but Fund Securities received on redemption may not always be identical to Deposit Securities deposited in connection with the purchase of Creation Units for the same day. The Funds will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Fund Securities, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act.

underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

#### *Section 24(d) of the Act*

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>11</sup>

<sup>11</sup> Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Shares from the Funds or an underwriter. Applicants further state that each Fund's Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Fund's Prospectus will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within

8. Applicants state that Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information will be published daily in the financial section of newspapers. In addition, a website will be maintained that will include each Fund's Prospectus and SAI, the relevant Underlying Index for each Fund, and additional quantitative information that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV ("Bid/Ask Price"),<sup>12</sup> the NAV for each Fund, and information about the premiums and discounts at which the Fund Shares have traded.

9. Applicants will arrange for broker-dealers selling Shares in the secondary market to provide purchasers with a product description ("Product Description") that describes, in plain English, the relevant Fund and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

#### *Section 17(a)(1) and (2) of the Act*

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person ("second-tier affiliate") from selling any security to or purchasing any security

the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

<sup>12</sup> The Bid-Ask Price per Fund Share of a Fund is determined using the highest bid and the lowest offer on the Exchange on which the Fund Shares are listed.

from the company. Section 2(a)(3) of the Act defines "affiliated person" to include 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, any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an "Affiliated Fund"). Applicants state that if Creation Units of all of the Funds or of one or more particular Funds are held by twenty or fewer investors, including a Specialist or Market Maker, some or all of such investors will be 5% owners of the Fund, and one or more investors may hold in excess of 25% of the Fund. Such investors would be deemed to be affiliated persons of the Fund.

11. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons that are affiliated persons or second-tier affiliates of the Funds solely by virtue of: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the Shares of one or more Affiliated Funds, to effectuate in-kind purchases and redemptions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the 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, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general provisions of the Act.

13. Applicants assert that no useful purpose would be served by prohibiting

these types of affiliated persons from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of a Fund, or the affiliated persons of such affiliated persons, to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

### Applicants' Conditions

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

1. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company, and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

2. As long as the Funds operate in reliance on the requested order, the Shares will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable, and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The website maintained for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four

previous calendar quarters. In addition, the Product Description for each Fund will state that the website for the Fund has information about the premiums and discounts at which Shares have traded.

5. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 4(b), (i) in the case of the Fund's Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-21739 Filed 11-5-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28039; 812-13416]

### Rafferty Asset Management, et al.; Notice of Application

October 30, 2007.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for 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 management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies registered under the Act, that are outside of the same group of investment

companies as the acquiring investment companies.

**APPLICANTS:** Rafferty Asset Management, LLC ("Rafferty" or "Adviser"), Direxion Funds ("DF") and Direxion Insurance Trust LLC ("DIT," together with DF, the "Trusts").

**FILING DATES:** The application was filed on August 10, 2007, and amended on October 26, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 26, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 33 Whitehall Street, 10th Floor, New York, NY 10004.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102 (telephone (202) 551-5850).

### Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and are each comprised of separate series ("Funds") that pursue distinct investment objectives and strategies. Shares of Funds of DF are sold publicly to retail investors, and shares of Funds of DIT are sold to insurance company separate accounts funding variable life and variable annuity contracts. The Adviser is registered as an investment adviser