

it was unable to engage in any pre-filing consultations with participants due to the press of other business. The Postal Service states, however, that it informed participants (from Docket No. C2004-3) of its intention to file this Request, that it is committed to engage in settlement discussions, and that it encouraged participants to engage in informal requests for additional information before commencing formal discovery to develop a record in pursuit of a mutually agreeable settlement agreement. Request at 3-4.

The Postal Service reads Order No. 1475 as authorizing settlement procedures in this proceeding and thus has not requested that such procedures be established. *Id.* at 4. Instead, the Postal Service filed a Notice of Settlement Teleconference advising participants to inform it of their availability to participate in such a conference during the period March 5 through March 23, 2007. Notice at 1.

#### V. Commission Response

**Intervention.** Order No. 1476 set the due date for notices of intervention at 28 days following submission of the Postal Service's Request. Since the Request was filed February 22, 2007, notices of intervention from any interested persons are due no later than March 22, 2007. The notice of intervention shall be filed electronically via the Commission's Web site (*see* Filing Online), unless a waiver is obtained for hardcopy filing. 39 CFR 3001.9(a) and 10(a). Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a. No decision has been made at this point on whether a hearing will be held in this case.

**Settlement.** In Order No. 1475, the Commission suggested that the Postal Service may wish to engage participants in a pre-filing dialogue "in an effort to fashion a broadly acceptable pricing approach." PRC Order No. 1475 at 15 (footnote omitted). As noted above, the Postal Service's efforts to do so were thwarted by the press of other business. Its proposal to conduct a settlement teleconference is reasonable, particularly given the dispersed geographic location of the participants.

The Commission appoints Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. At a minimum, a periodic report on the status of settlement discussions shall be filed no later than two business days prior to the prehearing conference scheduled herein. The Commission authorizes the

settlement coordinator to hold one or more settlement teleconferences from March 5-28, 2007. In addition, the Commission will make its hearing room available for conducting settlement conferences. Authorization of settlement discussions does not constitute a finding on the necessity of hearings in this case.

**Prehearing conference.** A prehearing conference will be held April 3, 2007, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to identify any issue(s) that would indicate a need to schedule a hearing, along with other matters referred to in this order.

**Conditional Motion for Waiver.** Participants may comment on the Postal Service's conditional motion to waive certain filing requirements. Responses to the Postal Service's Motion for Waiver are due on or before March 22, 2007.

**Representation of the general public.** In initiating this proceeding, the Commission designated Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. *See* PRC Order No. 1476 at 2-3.

**Administrative matter.** The docket name has been modified to reflect the inclusion of stamped cards in the Postal Service's Request.

#### Ordering Paragraphs

*It is ordered:*

1. The Commission will consider the Postal Service Request referred to in the body of this order in Docket No. MC2006-7.
2. The Commission will sit *en banc* in this proceeding.
3. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
4. The deadline for filing notices of intervention is March 22, 2007.
5. A prehearing conference will be held April 3, 2007 at 10 a.m. in the Commission's hearing room.
6. Responses to the Postal Service's Motion for Waiver of certain filing requirements are due on or before March 22, 2007.
7. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Steven W. Williams,**  
Secretary.

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**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27745; 812-13344]

### BLDRS Index Funds Trust, et al.; Notice of Application

February 28, 2007.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 4(2), 22(d), 24(d) and 26(a)(2)(C) of the Act and rule 22c-1 under the Act; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act; and under section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit: (a) BLDRS Index Funds Trust (the "Fund"), a unit investment trust ("UIT") with multiple series (each series, a "Trust") whose portfolios will consist of the component stocks of various specified indices (collectively, the "Benchmark Indices," and each, a "Benchmark Index"), to issue shares ("Trust Shares") that are only redeemable in large aggregations; (b) secondary market transactions in Trust Shares to occur at negotiated prices; (c) dealers to sell Trust 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) the Trusts, rather than the Sponsor (as defined below), to bear certain expenses associated with maintaining the Trusts; (e) certain "affiliated persons" of the Trusts to deposit securities into, and receive securities from, the Trusts in connection with the purchase and redemption of Trust Shares; and (f) the Trusts to reimburse the Sponsor for payment of an annual licensing fee to The Bank of New York ("BoNY").

**APPLICANTS:** The Fund, PowerShares Capital Management LLC ("PowerShares," together with its successor in interest<sup>1</sup> and with any person, directly or indirectly, controlling, controlled by, or under common control with, PowerShares, "Sponsor"), and ALPS Distributors, Inc. ("Distributor").

**FILING DATES:** The application was filed on November 20, 2006. Applicants have

<sup>1</sup> "Successors in interest" means any entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

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 requested relief 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 March 20, 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:** Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. *Applicants:* H. Bruce Bond, PowerShares Capital Management LLC, 301 West Roosevelt Road, Wheaton, IL 60187.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 551-6870, or Janet M. Grossnickle, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

### Applicants' Representations

1. Each Trust is a unit investment trust that is or will be organized under the laws of the State of New York. The Sponsor is a wholly owned subsidiary of AIM Management Group Inc.<sup>2</sup> The Bank of New York ("BoNY") acts as trustee to each Trust ("Trustee") pursuant to a trust agreement entered into by and between BoNY and the Initial Sponsor (each a "Trust Agreement"). The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and serves, on an

<sup>2</sup> On October 18, 2006, PowerShares entered into a Transaction Agreement ("Transaction Agreement") with The Nasdaq Stock Market ("Nasdaq"), the parent of Nasdaq Global Funds, Inc. (formerly named Nasdaq AMEX Investment Product Services, Inc., and later renamed Nasdaq Financial Products Services, Inc., the "Initial Sponsor") pursuant to which the Initial Sponsor will transfer sponsorship of the Trusts to PowerShares. In connection with the Transaction Agreement, PowerShares is seeking exemptive relief substantially identical to the relief granted to the Trust pursuant to a Commission order (Investment Company Act Release No. 25797 (Nov. 8, 2002), as amended by Investment Company Act Release No. 26415 (Apr. 9, 2004)). The transfer of sponsorship of the Trust from the Initial Sponsor to PowerShares is contingent upon receipt of the exemptive relief requested in the application.

agency basis, as principal underwriter of the Trusts.

2. Each Trust holds a portfolio of securities ("Portfolio Securities") consisting of substantially all of the securities in substantially the same weighting as the component securities of the Benchmark Index that it tracks (the "Index Securities"). There are currently four Trusts ("Current Trusts").<sup>3</sup> The Benchmark Indices for the Current Trusts (the "Initial Benchmark Indices") are compiled by BoNY (the "BoNY Index Provider").<sup>4</sup> Pursuant to guidelines adopted by BoNY for the Index Provider, the BoNY personnel involved in compiling the Benchmark Indices cannot include any BoNY employees who are members of the BoNY division that provides trustee services to the Trusts, any broker-dealer affiliated with BoNY, BoNY's asset management division, or BoNY's private banking group.

3. In the future, applicants may offer additional Trusts based on other Benchmark Indices ("Future Trusts"). Any Future Trust will (a) be organized under New York state law pursuant to a trust agreement substantially identical to the Trust Agreements, (b) be sponsored by the Sponsor, and (c) comply with the terms and conditions of the requested order. No entity that creates, compiles, sponsors or maintains a Benchmark Index 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 Sponsor, Distributor or promoter of a Trust.

4. Trust Shares, units of beneficial interest in the Trusts, are designed to provide investors with an instrument that closely tracks the Benchmark

<sup>3</sup> The Current Trusts are the BLDRS Asia 50 ADR Index Fund, BLDRS Developed Markets 100 ADR Index Fund, BLDRS Emerging Markets 50 ADR Index Fund and BLDRS Europe 100 ADR Index Fund. All Trusts that currently intend to rely on the requested order have been named as applicants. Any other existing Trust or any Trust organized in the future that relies on the requested order will comply with the terms and conditions of the application.

<sup>4</sup> The Benchmark Indices are the (a) BoNY Asia 50 ADR Index, (b) BoNY Developed Markets 100 ADR Index, (c) BoNY Emerging Markets 50 ADR Index and (d) BoNY Europe 100 ADR Index. The Initial Benchmark Indices are sub-indices of the BoNY ADR Index, which is an index of all U.S. exchange-listed Depository Receipts ("DRs"), subject to certain eligibility requirements. Applicants note that BoNY is a prominent participant in the DR market, and receives various fees and commissions in connection with its DR program functions. BoNY has informed applicants that the index compilation is bound by objective criteria, and that the identity of the depository bank for a DR is never a criterion in the selection of Index Securities. As discussed in the application, BoNY represents that its DR sales efforts are not coordinated with the compilation of the Benchmark Indices.

Indices, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Index Securities to the extent they exceed the Trust's fees and expenses.<sup>5</sup> The Trustee makes adjustments to the Portfolio Securities to reflect changes made by the BoNY Index Provider to the composition and weighting of the Index Securities.<sup>6</sup> All adjustments to the Portfolio Securities are made by the Trustee as set forth in the Trust Agreements and are non-discretionary. Applicants state that the Trustee, consistent with its fiduciary duties, may utilize a broker-dealer that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trustee (each, an "Affiliated Broker-Dealer") in executing the transactions that are necessitated by the required adjustment(s).<sup>7</sup> Applicants state that neither BoNY nor any Affiliated Broker-Dealer purchases or sells DRs on a principal basis, or intends to sell DRs or any other securities to any Trust on a principal basis. BoNY and its Affiliated Broker-Dealers would engage in transactions with a Trust on an agency basis only.

5. Trust fees and expenses are first paid out of income received by the Trust in the form of dividends and other distributions on Portfolio Securities.<sup>8</sup> Each Trust pays the Trustee a fee ranging from 0.06% to 0.10% of the net asset value ("NAV") of the Trust on an annualized basis, such percentage to vary based on the NAV of the Trust. The Trustee in its discretion may waive all or any portion of such fee.

6. Pursuant to a license agreement ("License Agreement"), the BoNY Index

<sup>5</sup> The Trusts make quarterly distributions when dividends on the Portfolio Securities and other income of the Trust, if any, exceed fees and expenses accrued by the Trust during the previous quarter. The Trustee may vary the frequency of dividend distributions under certain circumstances.

<sup>6</sup> The BoNY Index Provider determines, comprises and calculates Benchmark Indices without regard to any Trust. BoNY has instituted formal firewall procedures to ensure that no BoNY personnel involved in providing trustee services to the Trusts have access to information regarding changes to the Benchmark Indices prior to their public announcement.

<sup>7</sup> BoNY has adopted firewall procedures that prohibit communications regarding changes or proposed changes to the Benchmark Indices between any Affiliated Broker-Dealer and the BoNY personnel involved in the compilation of the Benchmark Indices.

<sup>8</sup> Applicants expect that the income of the Trust may be insufficient to pay the fees and expenses of the Trust. In such circumstances, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

Provider has granted the Sponsor a license to use the Benchmark Indices and certain trademarks of BoNY. The Sponsor will pay the BoNY Index Provider an annual licensing fee for each Benchmark Index and will seek reimbursement from each Trust for the fee charged in connection with its Benchmark Index. The Sponsor will pay the Distributor a flat annual fee for services provided to the Trusts. The Sponsor will not seek reimbursement from any Trust for such payment without obtaining prior exemptive relief from the Commission.

7. Trust Shares are issued in aggregations of 50,000 shares ("Creation Units"). Orders to purchase Creation Units generally must be delivered to the Distributor through a party that has executed a participant agreement with the Distributor and Trustee, and is either (a) a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC," and the NSCC process of placing orders, the "Trust Shares Clearing Process"), or (b) a Depository Trust Company ("DTC") participant, but such entity or person is not required to be a Nasdaq member.

8. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trustee a "Portfolio Deposit," consisting of the following: (a) A portfolio of securities substantially similar in composition and weighting to the Index Securities ("Deposit Securities");<sup>9</sup> (b) a cash payment equal to the dividends accrued on the Portfolio Securities since the last dividend payment on the Portfolio Securities, net of expenses and liabilities ("Income Net of Expense Amount"); and (c) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis ("Balancing Amount," and together with the Income Net of Expense Amount, the "Cash Component").<sup>10</sup> The Sponsor or its

designee makes available on each Business Day a list of the names and the required number of shares of each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount, effective through and including the previous Business Day, per outstanding Trust Share.<sup>11</sup> The Sponsor or its designee makes available on the Exchange, every 15 seconds of each Business Day, the sum of the Income Net of Expense Amount and the value of the Deposit Securities, on a per Trust Share basis. An investor making a Portfolio Deposit is charged a service fee ("Transaction Fee") to be paid to the Trustee to defray the Trustee's costs in processing transactions for the Trust.<sup>12</sup>

9. Orders to purchase Creation Units are placed with the Distributor, who is responsible for transmitting orders to the Trustee. The Distributor issues confirmations of acceptance, issues delivery instructions to the Trustee to implement the delivery of Creation Units, and maintains records of the orders and the confirmations. The Distributor also is responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services.

10. Persons purchasing Creation Units from the Trust may hold the Trust Shares or sell some, or all, of them in

the Cash Component that will comprise a Portfolio Deposit for the following Business Day. A "Business Day" is any day that the Nasdaq or any other Exchange that lists Trust Shares is open for business and any day that the Trusts are open for business as required by section 22(e) of the Act.

<sup>11</sup> The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the Index Security if (a) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit, or (b) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves or when the investor is a broker-dealer and the security is on its "restricted list").

<sup>12</sup> The Transaction Fee will be \$10 per each security "name" (*i.e.*, each security identified by a separate CUSIP number) in the Portfolio Deposit, rounded to the nearest \$500 for BLDRS Asia 50 ADR Index Fund and BLDRS Emerging Markets 50 ADR Index Fund and \$1,000 for BLDRS Developed Markets 100 ADR Index Fund and BLDRS Europe 100 ADR Index Fund per Participating Party (as defined below) per day, regardless of the number of Creation Units purchased by such Participating Party on such day. "Participating Party" means an NSCC participant who may place orders through the Trust Shares Clearing Process. The Transaction Fee may be changed by the Trustee with the Sponsor's consent, but will not exceed 0.20% of the value of a Creation Unit. Investors who purchase Creation Units outside the Trust Shares Clearing Process will pay the Transaction Fee plus an amount not to exceed three times the Transaction Fee. The amount of the Transaction Fee is disclosed in the prospectus for the Trust.

the secondary market. Trust Shares of the Current Trusts are listed on Nasdaq and all Trust Shares will be listed on a national securities exchange as defined in section 2(a)(26) of the Act ("Exchange"). Trust Shares are traded in the secondary market as individual units (*i.e.*, in less than Creation Units) in the same manner as other equity securities. Participating Parties act as market makers ("Market Makers") on Nasdaq and maintain a market for Trust Shares.<sup>13</sup> The price of each Trust Share that trades on Nasdaq is based on the current bid-offer market. Transactions involving Trust Shares on Nasdaq are subject to customary brokerage commissions and charges. Applicants state that the price at which Trust Shares trade is disciplined by arbitrage opportunities created by the continuous ability to purchase or redeem Creation Units at their NAV, which ensures that Trust Shares do not trade at a material premium or discount in relation to their NAV.<sup>14</sup>

11. Purchasers of Creation Units include institutional investors and arbitrageurs, which include institutional investors. Market Makers or specialists of an Exchange also may purchase Trust Shares in connection with their market making activities. Secondary market purchasers of Trust Shares include both institutional and retail investors.<sup>15</sup>

12. Applicants make available a standard Trust Shares product description ("Product Description") to members and member organizations for

<sup>13</sup> No particular Market Maker is contractually obligated to make a market in Trust Shares although Nasdaq's listing requirements stipulate that at least two Market Makers must be registered in Trust Shares to maintain a listing on Nasdaq. Applicants state that no Market Maker will be an affiliated person, promoter, or principal underwriter of the Trusts, or an affiliated person of such persons, within the meaning of section 2(a)(3) of the Act, except pursuant to section 2(a)(3)(A) or (C) of the Act due to ownership of Trust Shares, as described below.

<sup>14</sup> Applicants do not believe there are any special liquidity issues as to constituents in the Benchmark Indices, in light of the fact that constituent DRs are selected based on liquidity that is high relative to DRs that would otherwise fit the relevant criteria. The constituent DRs of the Benchmark Indices are traded and priced on national securities exchanges, as are the constituent securities of other indices on which exchange-traded funds investing in domestic securities are based. Accordingly, applicants believe that the pricing transparency for DRs should be equivalent to that of other securities that are traded and priced on national securities exchanges. Because there are no apparent differences in the pricing transparency between DRs and such other equity securities, applicants believe that there are no corresponding differences in, and no deleterious effects on, the arbitrage efficiency of the Trusts.

<sup>15</sup> Trust Shares are registered in book-entry form only. DTC or its nominee is the record owner of all outstanding Trust Shares. Beneficial ownership of Trust Shares is shown on the records of DTC or its participants.

<sup>9</sup> The Trusts will comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities (as defined below), including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933. The specified Deposit Securities and Redemption Securities generally will correspond pro rata to the Portfolio Securities.

<sup>10</sup> At the close of the market on each Business Day (as defined below), the Trustee calculates the NAV of each Trust, divides that amount by the total number of shares outstanding (yielding a "Per Trust Share NAV"), multiplies the Per Trust Share NAV by the number of Trust Shares in a Creation Unit (*e.g.*, 50,000), thereby calculating the NAV per Creation Unit. The Trustee then calculates the required number of shares of Index Securities and

distribution to investors purchasing Trust Shares in accordance with Exchange rules. Currently, the rules of the National Association of Securities Dealers ("NASD") require that NASD members distribute a Product Description to all purchasers of Trust Shares. The Product Description provides a plain English overview of a Trust, including the material risks and potential rewards of owning Trust Shares, and discloses the salient aspects of Trust Shares. The Product Description advises investors that a prospectus for Trust Shares is available without charge from the investor's broker or from the Distributor. Applicants believe that the volume of purchase transactions in which an investor will not receive a Product Description does not constitute a significant portion of the market activity in Trust Shares.

13. Trust Shares are not individually redeemable, except upon termination of the Trust. Trust Shares are redeemable in Creation Units only. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the Deposit Securities as of the date the redemption request was made ("Redemption Securities"). The redeeming investor may receive the cash equivalent of an Index Security (a) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust, or (b) upon the request of the redeeming investor (because, for example, the redeeming investor is restricted by regulation or otherwise from holding an Index Security). The redeeming investor also may receive, or may pay, cash in an amount equal to the Cash Component in effect on the relevant Business Day for Portfolio Deposits ("Cash Redemption Amount"). The redeeming investor will pay a Transaction Fee, which will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit on the relevant Business Day.

14. Because each Trust ordinarily redeems in kind, rather than in cash, the Trustee will not have to maintain cash reserves for redemptions. This allows the assets of each Trust to be committed as fully as possible to tracking the relevant Benchmark Index, and allows each Trust to track the relevant Benchmark Index more closely than other market basket products that must allocate a portion of their assets to cash for redemptions.

### Applicants' Legal Analysis

1. Applicants request an order under (a) section 6(c) of the Act granting an exemption from sections 2(a)(32), 4(2), 22(d), 24(d) and 26(a)(2)(C) of the Act and rule 22c-1 under the Act; (b) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and (c) section 17(d) and rule 17d-1 under the Act to permit certain joint transactions.

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, 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 4(2) and 2(a)(32) of the Act*

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. 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 a proportionate share of the issuer's current net assets, or the cash equivalent. Because Trust Shares would not be individually redeemable, applicants request an order that would permit the Trust to register as a UIT and issue Trust Shares that are redeemable in Creation Units only. Applicants state that investors may purchase and redeem Trust Shares through the Trust in Creation Units. Applicants further state that, because the market price of Creation Units is disciplined by arbitrage opportunities, investors should be able to sell individual Trust Shares in the secondary market at approximately 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 that is being currently offered to the public by or through an underwriter, except at the 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 next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in

Trust Shares takes place at negotiated prices, not at a current offering price described in the prospectus and not at a price based on NAV. Thus, purchases and sales of Trust Shares in the secondary market do not comply with section 22(d) and rule 22c-1, and applicants request an exemption from these provisions.

5. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions and those of rule 22c-1 appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of 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. Applicants believe that none of these purposes is thwarted by permitting Trust Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Trust Shares does not involve the Trust directly and cannot, therefore, result in dilution of Trust assets. Applicants also state that, to the extent different prices exist during a trading day, or from day to day, for Trust Shares, such variances occur as a result of third-party market forces, such as supply and demand, and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Trust Shares do not create discrimination or preferential treatment among buyers. Finally, applicants contend that the proposed distribution system is orderly because arbitrage activity ensures that the difference between the market price of Trust Shares and their NAV remains narrow.

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

6. Section 24(d) of the Act provides, in pertinent 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 a UIT. Applicants request an exemption from section 24(d) to permit dealers in Trust Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>16</sup>

<sup>16</sup> Applicants are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an issuer. Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the

7. Applicants state that the secondary market for Trust Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor of the UIT. Trust Shares are listed on an Exchange and trade in the same manner as listed securities issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market are generally not required to deliver a prospectus to a purchaser.

8. Applicants contend that Trust Shares, as listed securities, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Trust Shares are exchange-listed, prospective investors have access to several types of market information about the product. Applicants state that quotations, last sale price, and volume information are continually available on a real-time basis through the consolidated tape and are available throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also is published in the financial section of newspapers. The Sponsor publishes daily, on a per Trust Share basis, the Income Net of Expense Amount. The Fund's Web site contains quantitative information, updated on a daily basis, regarding the previous Business Day's NAV and the reported closing price. The Web site also includes for each Trust, a calculation of the premium or discount of the closing price against NAV and data, in chart format, displaying the frequency distribution of discounts and premiums of the closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

circumstances, 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 takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Trust Shares, and sells Trust Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Trust Shares with an active selling effort involving solicitation of secondary market demand for Trust Shares. The prospectus states that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also states that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Trust Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

9. In addition, secondary market purchasers generally receive the Product Description. Applicants state that, while the Product Description is not intended as a substitute for a prospectus, it contains pertinent information about Trust Shares. Applicants also note that Trust Shares are understandable to retail investors as a product that tracks the Benchmark Indices.

#### *Section 26(a)(2)(C) of the Act*

10. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of a Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit any Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

11. Applicants state that, ordinarily, a sponsor of a UIT has an opportunity to profit in connection with the creation of a trust in two ways—through the difference between the acquisition cost of the securities and their value on the date of deposit in the trust and, to the extent a secondary market is maintained for units, through the imposition of sales charges on resales of units. Expenses normally incurred in the creation and maintenance of a trust can then be offset against such profits. Applicants assert, however, that under the proposed structure, the usual sources of income are not available because the Sponsor does not impose a sales load or deposit Index Securities into the Trust. Applicants contend that the motivation for the limitations imposed in section 26(a)(2)(C) of the Act was the fear that sponsors could take unfair advantage of a trust to profit, when profits were already being generated through sales charges and market gains (on the securities deposited by the sponsor). Applicants contend that no such opportunity to profit exists for Sponsor.

12. Applicants state that permitting a Trust to reimburse the Sponsor for certain of the Trust's expenses is no more disadvantageous to the holders of Trust Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that a Trust pays the Sponsor only its actual out-of-pocket expenses. Finally, applicants state that the payment is capped at 30 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount to be absorbed by the Sponsor.

#### *Section 17(a) of the Act*

13. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from, the investment company. Section 2(a)(3) 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, and any person controlling, controlled by or under common control with the other person. Section 2(a)(9) provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that, because the definition of "affiliated person" includes any person owning 5% or more, or more than 25%, of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be an affiliated person of the Trust so long as 20 or fewer Creation Units are in existence. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit persons that are affiliated persons solely by virtue of a 5% or more, or more than 25%, ownership interest in a Trust (or affiliated persons of such persons that are not otherwise affiliated with the Trusts) to purchase and redeem Creation Units through in-kind transactions.

14. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and with the general purposes of the Act. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases and redemptions of Creation Units. The composition of a Portfolio Deposit made by a purchaser, like the Redemption Securities and Cash Redemption Amount given to a redeeming investor, is the same regardless of the investor's identity, and is valued under the same objective standards applied to valuing the Portfolio Securities in connection with determining the Trust's NAV. Therefore, applicants state that in-kind purchases and redemptions afford no opportunity to the affiliated persons described above to effect a transaction detrimental to other holders of Trust Shares. Applicants also believe that in-kind

purchases and redemptions do not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

*Section 17(d) of the Act and Rule 17d-1 Under the Act*

15. Section 17(d) of the Act and rule 17d-1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d-1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

16. Applicants request an order under rule 17d-1 that would permit a Trust to reimburse the Sponsor for the payment to the BoNY Index Provider of an annual license fee under the License Agreement. Applicants believe that relief is necessary because the Sponsor may be deemed an affiliated person of the Trust, as defined in section 2(a)(3) of the Act, and the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) and rule 17d-1.

17. The License Agreement allows applicants to use the Benchmark Indices as bases for Trust Shares and to use certain of BoNY's trade name and trademark rights. Applicants believe that BoNY is a valuable name that is well-known to investors and believe that investors wish to invest in instruments that closely mirror the Benchmark Indices. In view of this, applicants state that it is necessary to obtain from BoNY the License Agreement so that appropriate reference to BoNY may be made in materials describing Trust Shares and the Trust. Applicants assert that the terms and provisions of the License Agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value, is in an amount comparable to that which would be charged by the

BoNY Index Provider for similar arrangements, and is in an amount comparable to that charged by licensors in connection with the formation of other UITs based on other indices. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d-1.

**Applicants' Conditions**

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

1. Each Trust's prospectus and Product Description will clearly disclose that, for purposes of the Act, Trust Shares are issued by a registered investment company, and the acquisition of Trust Shares by investment companies is subject to the restrictions of Section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in Trust Shares beyond the limits in Section 12(d)(1)(A), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Trust regarding the terms of the investment.

2. As long as a Trust operates in reliance on the requested order, the Trust Shares will be listed on an Exchange.

3. The Web site for the Trusts, which will be publicly accessible at no charge, will contain the following information, on a per Trust Share basis, for each Trust: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Trust will state that the Web site for the Trusts has information about the premiums and discounts at which the Trust Shares have traded.

4. The prospectus and annual report for each Trust will also include: (a) The information listed in condition 3(b) above, (i) in the case of the 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 Trust Share basis for one, five and ten year periods (or life of that Trust), (i) the cumulative total return and the average annual total return based on NAV and closing price,

and (ii) the cumulative total return of the relevant Benchmark Index.

5. Before a Trust 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 Trust Shares to deliver a Product Description to purchasers of Trust Shares.

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

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

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**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 27741; 812-13327]**

**Liberty All-Star Equity Fund, et al.; Notice of Application**

February 27, 2007.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the two applicant registered closed-end investment companies to delay shareholder vote on agreements with sub-advisers ("Portfolio Managers," and the agreements, "Portfolio Management Agreements") until the next annual shareholders meeting. The order would supersede prior orders ("Prior Orders").<sup>1</sup>

**APPLICANTS:** Liberty All-Star Equity Fund (the "Equity Fund") and Liberty All-Star Growth Fund, Inc. (the "Growth Fund") (collectively, the "Funds"), and ALPS Advisers, Inc. ("ALPS Advisers").

<sup>1</sup> Previous orders received by the Equity Fund (as defined below) are: *Liberty All-Star Equity Fund, et al.*, Investment Company Act Release Nos. 19436 (April 26, 1993) (notice) and 19491 (May 25, 1993) (order); *Liberty All-Star Equity Fund, et al.*, Investment Company Act Release Nos. 20347 (June 8, 1994) (notice) and 20385 (July 6, 1994) (order); and *Liberty All-Star Equity Fund, et al.*, Investment Company Act Release Nos. 22498 (February 6, 1997) (notice) and 22543 (March 4, 1997) (order). Previous orders received by the Growth Fund (as defined below) are: *The Charles Allmon Trust, Inc., et al.*, Investment Company Act Release Nos. 20772 (December 15, 1994) (notice) and 20824 (January 10, 1995) (order); and *Liberty All-Star Growth Fund, Inc., et al.*, Investment Company Act Release Nos. 22499 (February 6, 1997) (notice) and 22542 (March 4, 1997) (order).