



## **TXF FUNDS, INC.**

### **STATEMENT OF ADDITIONAL INFORMATION OCTOBER 5, 2009**

(as supplemented November 12, 2009)

This Statement of Additional Information, which is not a prospectus, contains additional information about TXF Funds, Inc. (the “Company”) and TXF Large Companies ETF (the “Fund”). This Statement of Additional Information should be read in conjunction with the Company’s current prospectus, dated October 5, 2009, as it may be revised from time to time (the “Prospectus”). Capitalized terms used herein that are not defined have the same meaning ascribed to them in the Prospectus.

A copy of the Prospectus may be obtained without charge, by contacting the Fund’s Distributor, ALPS Distributors, Inc.

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## I. GENERAL INFORMATION ABOUT TXF FUNDS, INC.

TXF Funds, Inc. (the “Company”) was organized as a Maryland corporation on October 3, 2008. The Company’s initial Fund, TXF Large Companies ETF (the “Fund”), will invest in a portfolio of securities that substantially replicates the Spade® Texas Index (the “Underlying Index”). The Company may create additional funds or classes of shares in the future. The Company is registered with the SEC under the 1940 Act as an open-end, non-diversified management investment company.

Fund shares will be listed for secondary trading on the NYSE Arca, subject to notice of issuance. The Fund only issues and redeems shares in lots of 50,000 shares. These large lots are known as “Creation Units.” In the event of the liquidation of the Fund, the Fund may lower the number of shares in a Creation Unit. To purchase or redeem a Creation Unit, you must be an Authorized Participant or you must do so through a broker that is an Authorized Participant. An Authorized Participant is either a member of the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or a participant in the Depository Trust Company (“DTC”) that has executed a Participant Agreement with the Fund’s Distributor.

The Fund issues Creation Units in kind, in exchange for a basket of stocks that are part of the Fund’s Underlying Index (an “In-Kind Creation Basket”). The Fund also redeems Creation Units in kind; an investor who tenders a Creation Unit will receive, as redemption proceeds, a basket of stocks that are part of the Fund’s portfolio holdings (an “In-Kind Redemption Basket”). The In-Kind Creation Basket and the In-Kind Redemption Basket will usually, but may not necessarily always, be the same. As part of any creation or redemption transaction, the investor will either pay or receive some cash in addition to the securities, as described more fully below. The Fund reserves the right to issue Creation Units for cash, rather than in kind, although it has no current intention of doing so.

## II. INFORMATION ABOUT THE UNDERLYING INDEX AND THE INDEX ADMINISTRATOR

The Underlying Index was developed by ISBC/SPADE® Indexes LLC (the “Index Administrator”) and licensed to Geary Advisors, LLC (the “Advisor”) for use in an exchange traded fund and related ETF options products.

The component stocks are selected by the Index Administrator and the Underlying Index is compiled, maintained and calculated independently of the Fund, Advisor, or Distributor. The Index Administrator has no obligation to take the specific needs of the Fund, Advisor, or Distributor into account in the determination and calculation of the Underlying Index.



## **INVESTMENT OBJECTIVE**

The Fund seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its Underlying Index.

### ***Index Methodology***

The SPADE® Texas Index is calculated using a modified market capitalization weighting methodology. The components' market capitalization weights are modified to conform to asset diversification rules, which are applied in conjunction with the scheduled quarterly updates, and are designed to ensure that no company's stock has a weight greater than 10 percent at the time of balancing. The aggregate amount by which any components are reduced is redistributed proportionately across the remaining components. If necessary, the process is repeated until the asset diversification rules are complied with.

## **MAINTENANCE OF THE SPADE® TEXAS INDEX**

- (1) In the event of a merger between two components, the share weight of the surviving entity may be adjusted to account for any shares issued in the acquisition.
- (2) The Index Administrator may substitute components or change the number of issues included in the SPADE® Texas Index based on changing conditions in the market or in the event of certain types of corporate actions, including mergers, acquisitions, spin-offs and reorganizations.
- (3) In the event of component or share weight changes to the SPADE® Texas Index portfolio, the payment of dividends other than ordinary cash dividends, spin-offs, rights offerings, re-capitalizations or other corporate actions affecting a component of the SPADE® Texas Index, the SPADE® Texas Index may be adjusted to ensure that there are no changes to the SPADE® Texas Index level as a result of nonmarket forces.
- (4) For changes in a component's shares outstanding greater than 5 percent due to a merger, acquisition or spin-off, an adjustment will be made effective after the close on the effective date of the corporate action. Share changes less than 5 percent are made during the scheduled quarterly updates to the SPADE® Texas Index.

Changes to the SPADE® Texas Index composition and/or the component share weights in the SPADE® Texas Index typically take effect after the close of trading on the next to last business day of each calendar quarter month ("Rebalance Date"). The components and weights will be determined and announced at the close of



trading two days prior to the Rebalance Date. In conjunction with the quarterly review, the share weights used in the calculation of the SPADE® Texas Index are updated based upon current shares.

## **CALCULATION METHODOLOGY**

The Underlying Index is calculated using a modified market capitalization weighting methodology. The components' market capitalization weights are modified to conform to asset diversification rules which are applied in conjunction with the scheduled quarterly updates to the Underlying Index, and designed to ensure that no company's stock has a weight greater than 10% at the time of balancing. The aggregate amount by which any components are reduced is redistributed proportionately across the remaining components. If necessary, the process is repeated until the asset diversification rules are complied with.

## **MAINTENANCE OF THE UNDERLYING INDEXES INDEX**

- (1) In the event of a merger between two components, the share weight of the surviving entity may be adjusted to account for any shares issued in the acquisition.
- (2) The Index Administrator may substitute components or change the number of issues included in the Underlying Index, based on changing conditions in the market or in the event of certain types of corporate actions, including mergers, acquisitions, spin-offs and reorganizations.
- (3) In the event of component or share weight changes to the Underlying Index's portfolio, the payment of dividends other than ordinary cash dividends, spin-offs, rights offerings, re-capitalizations or other corporate actions affecting a component of an Underlying Index, the Underlying Index's divisor may be adjusted to ensure that there are no changes to the Underlying Index level's as a result of nonmarket forces.
- (4) For changes in a component's shares outstanding greater than 5% due to a merger, acquisition or spin-off, an adjustment will be made effective after the close on the effective date of the corporate action. Share changes less than 5% are made during the scheduled quarterly updates to the Underlying Indexes.

## **QUARTERLY UPDATES TO THE UNDERLYING INDEXES**

Changes to the Underlying Index's composition and/or the component share weights in the Underlying Index typically take effect after the close of trading on the next to last business day of each calendar quarter month ("Rebalance Date"). The



components and weights will be determined and announced at the close of trading two days prior to the Rebalance Date. In conjunction with the quarterly review, the share weights used in the calculation of the Underlying Indexes are updated based upon current shares.

### **DISCLAIMER**

The Underlying Index is a trademark of ISBC/SPADE® Indexes LLC and has been licensed for use for certain purposes by the Advisor. ISBC/SPADE® Indexes LLC's only relationship to TXF Funds, Inc. is the ISBC's licensing to the Advisor of certain ISBC trademarks, the SPADE® Texas Index trade name, and of the data supplied by ISBC/SPADE® Indexes which is determined, composed, and calculated by ISBC/SPADE® Indexes. The Fund and its shares are not sponsored, endorsed, sold, or promoted by ISBC/SPADE® Indexes. ISBC/SPADE® Indexes makes no warranty or representation, regarding the advisability of purchasing, holding or trading this product or investing in securities generally or in a Fund particularly or the ability of any data supplied by ISBC/SPADE® Indexes to track general stock market performance. ISBC/SPADE® Indexes has no obligation to take the needs of TXF Funds, Inc. the Fund, the Advisor, or any shareholders of the Fund into consideration in determining, composing or calculating the data supplied by ISBC/SPADE® Indexes. ISBC/SPADE® Indexes is not responsible for and has not participated in the determination of the prices of the common shares of the Fund or the timing of the issuance or sale of such common shares. The ISBC/SPADE® Indexes has no obligation or liability in connection with the administration, marketing or trading of the Fund shares.

## **III. ADDITIONAL INVESTMENT STRATEGIES AND RELATED RISKS**

The Fund's investment objectives and principal investment strategies and risks are set forth in the Prospectus. The following information supplements the information contained in the Prospectus. The Fund may hold cash and/or invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit ("CDs"), fixed time deposits and bankers' acceptance of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors service, Inc. or "A-1+" or "A-1" by Standard & Poor's or, if unrated, of comparable quality as determined by the Advisor; and (iv) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptance are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.



## IV. FUNDAMENTAL INVESTMENT LIMITATIONS

The Fund has adopted the following investment limitations as fundamental limitations, which cannot be changed without the approval of the holders of a majority of the Fund's outstanding shares. For these purposes, a "majority of outstanding shares" means the vote of the lesser of: (1) 67% or more of the shares of the Fund present at the meeting if the holders of more than 50% of the Fund's outstanding shares are present or represented by proxy; or (2) more than 50% of the outstanding shares of the Fund. The Fund may **not**:

1. Borrow money or issue senior securities, except as permitted under the 1940 Act, as interpreted, modified, or otherwise permitted by regulatory authority.
2. Make cash loans, except as permitted under the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority.
3. Pledge, hypothecate, mortgage or otherwise encumber its assets, except to secure permitted borrowings.
4. Purchase or sell physical commodities unless acquired as a result of ownership of securities or other instruments.
5. Purchase or sell real estate unless acquired as a result of ownership of securities or other instruments.
6. Act as an underwriter of another issuer's securities, except to the extent that the Fund may be deemed to be an underwriter within the meaning of the Securities Act in connection with the purchase and sale of portfolio securities.

The Fund has also adopted a policy that the Fund's portfolio will be modified to reflect changes in the Underlying Index. If the Underlying Index is not concentrated in a particular industry, the Fund will not be concentrated in that industry. If the Underlying Index is concentrated in a particular industry, the Fund will concentrate in that industry.

## V. MANAGEMENT

### OFFICERS AND DIRECTORS

The business and affairs of the Company is managed under the direction of its Board of Directors (the "Board"). Each Director serves until his termination, retirement, resignation, or death; or as otherwise specified in the Company's organizational documents. The Board is currently comprised of four (4) Directors, of whom three (3) Di-



rectors are not “interested” persons of the Fund or the Advisor, as defined under the 1940 Act (“Disinterested Directors”). The mailing address of the Directors and officers is One Leadership Square, Suite 200, 211 North Robinson, Oklahoma City, Oklahoma 73102. Certain information about the Company’s Directors and its executive officers is set forth below.

<u>Name, Address, and Age</u>	<u>Position(s) Held with Fund</u>	<u>Term of Office and Length of Time Served</u>	<u>Principal Occupation(s) During Past 5 Years</u>	<u>Other Directorships held by Director</u>
			OOK, Inc. 02/2008 to Present — President and CEO	
Interested Directors: Keith D. Geary <sup>1</sup> One Leadership Square 211 N. Robinson, Suite 200 Oklahoma City, OK 73102 (51 years old)	Director and Chief Executive Officer	Since 2008	Capital West Securities, Inc. 04/2007 to Present — Chairman, President and CEO	Capital West Securities, Inc. OOK, Inc. , a registered Investment Company
			UMB Bank 06/1997 to 04/2007 — Vice President — Investment Banking Division — Kansas City, Missouri	
Disinterested Director(s): John Shelley * 2000 S. Country Club Rd. El Reno, OK 73036 (58 years old)		Since 2008	The Bank of Union 1997 to Present — President/CEO/Chairman of the Board	OOK, Inc. The Bank of Union Union City Corporation LSB Industries, Inc. The Kempton Group
Earnest Frank Parrish* 723 Stonepoint Drive Edmond, OK 73034 (52 years old)		Since 2009	Corporate Care, Inc. 2003 to Present — President/CEO	OOK, Inc.
Mike Braun * 2000 S. Country Club Rd. El Reno, OK 73036 (51 years old)		Since 2008	The Bank of Union 03/06 to Present — Executive Vice-President/CFO	OOK, Inc. HeartLine, Inc. (nonprofit)
			Braun & Company PC 01/03 — 03/06: Certified Public Accountant	
Executive Officers: Keith D. Geary	Director and Chief Executive Officer	Since 2008	OOK, Inc. 02/2008 to Present — President and CEO  Capital West Securities, Inc. 04/2007 to Present — Chairman, President and CEO	OOK, Inc. Capital West Securities, Inc.
			UMB Bank 06/1997 to 04/2007 — Vice President — Investment Banking Division — Kansas City, Missouri	



Name, Address, and Age	Position(s) Held with Fund	Term of Office and Length of Time Served	Principal Occupation(s) During Past 5 Years	Other Directorships held by Director
Gary Pinkston One Leadership Square 211 N. Robinson, Suite 200 Oklahoma City, OK 73102 (61 years old)	Vice President, Principal Financial and Accounting Officer and Secretary	Since 2008,	OOK, Inc. 02/2008 to Present — Vice President, Principal Financial and Accounting Officer and Secretary	
			Capital West Securities, Inc. 2007 to Present — Chief Administrative Officer	
			UMB Bank 2006 to 2007 — Manager, Correspondent Banking - Oklahoma City, OK 1999 to 2006 — Manager, Investment Operations — Kansas City, Missouri	

\* Member of the Audit and Nominating Committees.

<sup>1</sup> Mr. and Mrs. Keith D. Geary each own 50% of The Geary Companies, Inc., an Oklahoma Corporation. The Geary Companies, Inc. is a controlling person of OOK, Inc. and the Company, the sole member and manager of the Advisor, and owner of Capital West Securities, Inc.

John Shelley's son, Michael Shelley, has been employed as an Investment Executive by Capital West Securities, Inc., an entity under common control with the Company and the Advisor, since July 2007.

The Geary Companies borrowed \$5 million on August 9, 2007 to fund the purchase of Affinity Holding Corp, which owned 100% of Capital West Securities, Inc. and has since been dissolved. Three million dollars was obtained from The Bank of Union, of which John Shelley is CEO and Chairman of the Board and Mike Braun is the Executive Vice President and CFO. In October 2008, with the original \$5 million reduced to \$2.8 million, that amount was refinanced at The Bank of Union on a five year amortization with annual principal reductions due each February 28 and interest payable monthly. With the 2009 principal payment already made, the outstanding amount is now \$2.5 million, which is not considered by the Bank to be "material" based upon the size of the Bank's total assets and total loan portfolios. At December 31, 2008, The Bank of Union held over \$235 million of total assets with over \$177 million in loans. The loan was 1.06% of The Bank of Union's total assets and 1.41% of its total loan portfolio. The current stockholders' equity of The Geary Companies is greater than \$4 million. Thus, the Board of Directors has determined that the loan to The Geary Companies from The Bank of Union would not tend to impair either John Shelley's or Mike Braun's independence and would not cause either of them to place his own interest over the interest of the Fund's shareholders.



## **RESPONSIBILITY OF THE BOARD**

The Board is ultimately responsible for the management of the Company's business operations in accordance with its duties under the Maryland General Corporation Law. The Board has appointed the Company's executive officers and delegated the responsibility for the day-to-day management of the Company's operations to those officers, subject to the Board's guidance.

## **BOARD COMMITTEES**

The Board has established the following committees:

**Audit Committee.** The Audit Committee is comprised of three (3) members, all of which are Disinterested Directors. The Audit Committee expects to meet at least twice annually to select, oversee and set the compensation of the Company's independent registered public accounting firm (the "Accountants"). The Audit Committee is responsible for pre-approving all audit and non-audit services performed by the Accountants for the Fund and for pre-approving certain non-audit services performed by the Accountants for the Advisor and Sub-Advisor and certain of their control persons. The Audit Committee also meets with the Accountants to review the Fund's financial statements and to report on its findings to the Board, and to provide the Accountants the opportunity to report on various other matters. The Audit Committee also acts as the Company's qualified legal compliance committee.

**Nominating Committee.** The Nominating Committee is comprised of three (3) members, all of which are Disinterested Directors. The Nominating Committee is responsible for the selection and nomination of Disinterested Directors of the Company. This committee will consider any candidate for Director recommended by a current shareholder if the Committee is required by law to do so.

## **COMPENSATION**

Because the Company is recently organized, there is no historical information regarding the compensation paid to the Company's Directors and executive officers. There are no plans to pay compensation to the Fund's Directors or Officers.

## **OWNERSHIP OF DIRECTORS AND EXECUTIVE OFFICERS**

As of the date of the Prospectus and this Statement of Additional Information, the Fund has not yet commenced operations. Therefore, none of the Company's Directors or executive officers own any shares of the Fund.

## **CODE OF ETHICS**



The Company, the Advisor, and the Distributor have each adopted codes of ethics pursuant to Rule 17j-1 of the 1940 Act. These codes of ethics restrict the personal securities transactions of access persons, as defined in the codes, of a Fund in securities that may be purchased or held by the Fund to ensure that such investments do not disadvantage the Fund. The codes of ethics for the Company, the Advisor, and the Distributor are filed as exhibits to the Fund's registration statement.

### **PROXY VOTING POLICIES**

The Board of Directors has delegated the responsibility to vote proxies for securities held in the Fund's portfolio to the Advisor, subject to the Board's oversight. Proxies for the portfolio securities are voted in accordance with the Company's proxy voting policies and procedures, which are set forth in Appendix A to this SAI.

### **CONTROL PERSONS**

Mr. and Mrs. Keith D. Geary, each own 50% of The Geary Companies, Inc., an Oklahoma Corporation located at One Leadership Square, Suite 200, 211 N. Robinson, Oklahoma City, OK 73102. The Geary Companies, Inc. is a controlling person of the Company and is the record owner of 2,500 shares of TXF Funds, Inc., 100% of the currently outstanding common stock of the Company. Thus Mr. and Mrs. Keith D. Geary are each beneficial owners of 50% of the outstanding common stock of TXF Funds, Inc.

## **VI. INVESTMENT ADVISORY AND OTHER SERVICES**

### **INVESTMENT ADVISOR**

Geary Advisors, LLC (the "Advisor") serves as the investment advisor to the Fund pursuant to an Investment Advisory Agreement (the "Advisory Agreement"), which sets forth the terms and conditions of Advisor's engagement as the Fund's investment advisor. Pursuant to the Advisory Agreement, the Advisor is responsible for the general management and administration of the Fund in accordance with the Fund's investment objectives, policies and strategies, subject to the supervision of the Board. The Advisor is a newly organized investment advisor located at One Leadership Square, Suite 200, 211 North Robinson, Oklahoma City, Oklahoma 73102. Currently, the Advisor's only investment advisory clients are the Fund and OOK, Inc.

The Advisor administers the Fund's business affairs, provides office facilities and equipment and certain clerical, bookkeeping and administrative services, and permits its officers and employees to serve without compensation as officers, Directors or employees of the Company. Pursuant to the Advisory Agreement, the Advisor is authorized to engage one or more sub-advisors for the performance of any of the



services to be provided by the Advisor under the Advisory Agreement. Under the Advisory Agreement, the Advisor is also responsible for arranging sub-advisory, transfer agency, custody, fund administration and accounting, and other non-distribution related services necessary for the Fund to operate. A discussion regarding the basis for the Board of Director's approval of the Advisory Agreement will be available in the Fund's annual or semi-annual reports.

For the services it provides to the Fund, the Advisor receives a unified advisory fee equal to an annual rate of .65% of the Fund's average daily net assets. The fees are accrued daily and paid monthly. Out of the advisory fee, the Advisor pays all fees and expenses of the Transfer Agent, Administrator and Accounting Agent and Custodian. The Fund is responsible for the payment of all other expenses associated with its operation, including but not limited to, brokerage expenses, taxes, interest, fees and expenses of counsel to the Fund, fees and expenses of the Disinterested Directors (including legal counsel fees), fees and expenses of the Chief Compliance Officer and expenses associated with the Fund's compliance program, litigation expenses, fees and expenses of the Fund's independent auditors, registration fees, expenses associated with compliance by the Fund with regulatory mandates, including those relating to the development and distribution of its prospectus and shareholder reports, and extraordinary expenses. The Advisor has agreed to waive investment advisory management fees and to reimburse other expenses to the extent the total annual fund operating expenses, as a percentage of average daily net assets, exceed 0.85% through December 31, 2010. After such date, the expense limitation may be terminated or revised. Amounts waived or reimbursed in a particular contractual period may be recouped by the Advisor within five years of the end of that contractual period to the extent that recoupment will not cause the Fund's expenses to exceed any expense limitation in place at that time. A waiver or reimbursement lowers the expense ratio and increases overall returns to investors.

The Advisor is owned by The Geary Companies, Inc., which is owned 50% each by Mr. and Mrs. Keith D. Geary. The Geary Companies, Inc. is a controlling person of the Company and also owns Capital West Securities, Inc., a broker/dealer firm headquartered in Oklahoma City, Oklahoma. The officers of the Advisor are Keith D. Geary, Chief Executive Officer, and Gary Pinkston, Chief Administrative Officer.

The Advisor intends to donate at least 10% of its management fee to Aaron's Bridge. Aaron's Bridge was founded by Keith and Joni Geary, parents of a son with autism. The mission for Aaron's Bridge is to facilitate access to more treatment options in Oklahoma for children with developmental disabilities, including Autism Spectrum Disorder.

Mr. Geary holds the Series 7 (General securities Representative), Series 63 (Uniform Securities Agent State Law), Series 53 (Municipal securities principal), Series 66 (Investment Advisor) and Series 24 (General securities principal) licenses.



Mr. Pinkston also holds the Series 7, 63, 53 and 24 licenses. He also holds the Series 52 Registered Representative (MSRB) license, Series 65 General Financial Advisor license and Series 27 Financial and Operations principal license.

The Advisory Agreement was initially approved by the Board on January 28th, 2009. The Advisory Agreement continues in effect for two years from its effective date and may be continued in effect annually thereafter if such continuance is approved by (i) the Board, or (ii) a majority (as defined in the 1940 Act) of the outstanding voting securities of the Fund, provided that in either case the continuance is also approved by a majority of the Disinterested Directors, by a vote cast in person at a meeting called for the purpose of voting on such continuance. The Advisory Agreement is terminable without penalty by the Company with respect to the Fund on 60 days written notice when authorized either by majority vote of its outstanding voting shares or by a vote of a majority of its Board (including a majority of the Disinterested Directors), or by the Advisor or Sub-Advisor (as applicable) on 60 days written notice, and will automatically terminate in the event of its assignment. The Advisory Agreement provides that in the absence of willful misfeasance, bad faith or gross negligence on the part of the Advisor, or of reckless disregard by it of its obligations thereunder, the Advisor shall not be liable for any action or failure to act in accordance with its duties thereunder.

## **DISTRIBUTOR**

Distributor. ALPS Distributors, Inc, with principal offices at 1290 Broadway, Suite 1100, Denver, Colorado 80203, serves as the distributor of Creation Units for the Fund on an agency basis (the "Distributor"). The Distributor has entered into a Distribution Agreement with the Company pursuant to which it distributes the shares of the Fund. Fund shares are continuously offered for sale by the Distributor only in Creation Units. Each Creation Unit is made up 50,000 Fund shares. The Distributor will not distribute Fund shares in amounts less than a Creation Unit.

Under the Distribution Agreement, the Distributor, for an annual fee of \$40,000, as agent for the Fund, will solicit orders for the purchase of Fund shares, provided that any subscriptions and orders will not be binding on the Fund until accepted by the Fund. The Distributor will deliver Prospectuses and, upon request, Statements of Additional Information to persons purchasing Creation Units and will maintain records of orders placed with it. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and a member of the Financial Industry Regulatory Authority ("FINRA").

The Distributor may also enter into agreements with securities dealers ("Soliciting Dealers") who will solicit purchases of Creation Units of Fund shares. Such Soliciting Dealers may also be Authorized Participants (as discussed in "Procedures for Cre-



ation of Creation Units" below) or DTC participants (as defined below).

The Distribution Agreement was initially approved by the Board on July 2, 2009. The Distribution Agreement continues in effect for two years from its effective date and may be continued in effect annually thereafter if such continuance is approved by (i) the Board, or (ii) a majority (as defined in the 1940 Act) of the outstanding voting securities of the Company, provided that in either case the continuance is also approved by a majority of the Disinterested Directors, by a vote cast in person at a meeting called for the purpose of voting on such continuance. The Distribution Agreement is terminable without penalty by the Company on 60 days written notice when authorized either by majority vote of its outstanding voting shares or by a vote of a majority of its Board (including a majority of the Disinterested Directors), or by the Distributor on 60 days written notice, and will automatically terminate in the event of its assignment. The Distribution Agreement provides that in the absence of willful misfeasance, bad faith or negligence on the part of the Distributor, or reckless disregard by it of its obligations thereunder, the Distributor shall not be liable for any action or failure to act in accordance with its duties thereunder.

### **ADMINISTRATION, CUSTODIAN AND TRANSFER AGENT**

The Bank of New York (BONY) serves as the Administration and Accounting Agent, Custodian and Transfer Agent to the Company. The Bank of New York's principal address is 101 Barclay Street, New York, New York, 10007-2550.

Pursuant to the Custodian Agreement between BONY and the Company, the Company has agreed to pay an annual custody fee of 0.0075% of each of its funds' first \$1 billion in total gross adjusted assets and 0.005% on the excess over \$1 billion, or the minimum annual fee of \$3,600, whichever is higher.

Pursuant to the Transfer Agency Agreement between BONY and the Company, the Company has agreed to an annual transfer agency fee of \$2,400.

Pursuant to the Fund Administration and Accounting Agreement between BONY and the Company, the Company has agreed to pay an annual fund accounting fee of 0.002% on the first \$1 billion of total gross adjusted assets, 0.0015% on the next \$1.5 billion and 0.001% on the excess over \$2.5 billion, or the minimum annual fee of \$60,000, and an administration services fee of 0.003% on the first \$1 billion in total gross adjusted assets, 0.0025% on the next \$1.5 billion and 0.002% on the excess over \$2.5 billion, with a minimum of \$66,000.

### **LEGAL COUNSEL**

McAfee & Taft A Professional Corporation, Two Leadership Square, 10th Floor, 211 North Robinson, Oklahoma City, Oklahoma 73102, serves as legal counsel to the



Company.

### **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Grant Thornton LLP, 211 North Robinson, Suite 1200, Oklahoma City, Oklahoma 73102, serves as the Company's independent registered public accounting firm. The independent registered public accounting firm audits the Fund's annual financial statements and provides other related services.

### **PORTFOLIO MANAGERS**

The Portfolio Managers, Mr. Keith D. Geary and Mr. Gary Pinkston, are employees of the Advisor. For information about the Advisor, Mr. Geary and Mr. Pinkston, see "Investment Advisory and Other Services." Mr. Geary and Mr. Pinkston are primarily responsible for the day-to-day management of the Fund. Information regarding Mr. Pinkston's and Mr. Geary's past occupations is included in a chart under "Officers and Directors".

The portfolio account for which the Portfolio Managers are responsible seeks to track the rate of return, risk profile and other characteristics of the Underlying Index by either replicating the same combination of securities that compose the benchmark or through a representative sampling of the securities that compose the benchmark based on objective criteria and data. The Portfolio Managers are required to manage the portfolios or accounts to meet those objectives.

### ***Portfolio Managers' Compensation***

The Advisor's Portfolio Managers responsible for managing the Fund will not currently receive any compensation for their services as such. However, because one of the Portfolio Managers, Mr. Keith D. Geary, is a beneficial owner of the Advisor, he may be compensated indirectly through such ownership interest.

### ***Portfolio Manager Ownership of Fund Shares***

Since the Fund has not yet commenced operations, the Portfolio Managers do not beneficially own any shares of the Fund.

### ***Management of Other Portfolios***

The Portfolio Managers for the Fund will also manage the portfolio of OOK, Inc., a registered investment company that has not yet begun operating. Aside from their Investment Advisory Agreement with OOK, Inc., they have no other Advisory or Sub-Advisory accounts. The Company is not presently aware of any material conflicts of interest that may arise in connection with the Portfolio Managers' Management of



the Fund's investment, on one hand, and the investments of OOK, Inc., on the other, as such investments will be concentrated in different geographic areas.

## **VII. PORTFOLIO HOLDINGS DISCLOSURE POLICIES AND PROCEDURES**

The Company's Board of Directors has adopted a policy regarding the disclosure of information about the Funds' security holdings. Each Fund's entire portfolio holdings are publicly disseminated each day the Fund is open for business through financial reporting and news services including publicly available internet web sites. In addition, the composition of the In-Kind Creation Basket and the In-Kind Redemption Basket, is publicly disseminated daily prior to the opening of the NYSE Arca via the NSCC.

## **VIII. PORTFOLIO TRANSACTIONS**

The policy of the Company regarding purchases and sales of securities for the Fund is that primary consideration will be given to obtaining "best execution" of transactions at commission rates that are reasonable in relation to the value of brokerage services obtained. Consistent with this policy, when securities transactions are effected on a stock exchange, the Company's policy is to pay commissions which are considered fair and reasonable without necessarily determining that the lowest possible commissions are paid in all circumstances. In seeking to determine the reasonableness of brokerage commissions paid in any transaction, the Advisor will rely upon its experience and knowledge regarding commissions generally charged by various brokers and on its judgment in evaluating the brokerage services received from the broker effecting the transaction. Such determinations are necessarily subjective and imprecise, as in most cases an exact dollar value for those services is not ascertainable.

The Advisor owes a fiduciary duty to its clients to obtain best execution on trades effected. "Best execution" does not necessarily mean that only brokers offering the lowest available commission rate will be selected to execute transactions. In determining "best execution," the full range of brokerage services applicable to a particular transaction may be considered, which may include, but is not limited to: liquidity, price, commission, timing, aggregated trades, capable floor brokers or traders, competent block trading coverage, ability to position, capital strength and stability, reliable and accurate communications and settlement processing, use of automation, knowledge of other buyers or sellers, arbitrage skills, administrative ability, underwriting and provision of information on a particular security or market in which the transaction is to occur. The specific criteria will vary depending upon the nature of the transaction, the market in which it is executed, and the extent to which it is



possible to select from among multiple broker/dealers. The Advisor will also use the Electronic Communications Network when appropriate.

The Advisor does not presently participate in any soft dollar arrangements. It may, however, aggregate trades with clients of a Sub-Advisor, if the advisor should choose to use one, whose commission dollars are used to generate soft dollar credits. Although the Fund's commissions are not used for soft dollars, the Fund may benefit from the soft dollar products/services received by the Sub-Advisor.

The Advisor assumes general supervision over placing orders on behalf of the Fund for the purchase or sale of portfolio securities. If purchases or sales of portfolio securities of the Fund and one or more other clients of the Advisor are considered at or about the same time, transactions in such securities are allocated among the several clients in a manner deemed equitable and consistent with its fiduciary obligations to all by the Advisor. In some cases, this procedure could have a detrimental effect on the price or volume of the security so far as the Fund is concerned. However, in other cases, it is possible that the ability to participate in volume transactions and to negotiate lower brokerage commissions will be beneficial to the Fund.

Portfolio turnover may vary from year to year, as well as within a year. High turnover rates are likely to result in comparatively greater brokerage expenses. However, because the Fund is an index fund, turnover will normally be less than for an actively managed fund. The overall reasonableness of brokerage commissions is evaluated by the Advisor based upon its knowledge of available information as to the general level of commission paid by other institutional investors for comparable services.

## **IX. INFORMATION ABOUT THE FUND SHARES**

### **GENERAL INFORMATION**

The Company is organized as a corporation under Maryland law. The authorized capital stock of the Company consists of 1,000,000 shares of stock having a par value of (\$.001) per share. The Company's Board of Directors is authorized to divide the shares into separate series of stock, one for each fund that may be created. Each fund will have a separate portfolio. The Company currently consists of one (1) series representing one underlying fund portfolio, TXF Large Companies ETF (the "Fund" or the "Initial Fund"). The Fund has been established by the Board of Directors as a separate series of securities under the Charter of the Company. Each series represents a separate pool of assets and will have different objectives and investment policies. Except as noted below, shares of each series, when issued, will have equal dividend, distribution and liquidation rights within the series, and each fractional share will have rights in proportion to the percentage it represents as a whole share. Generally, all Company shares will vote in the aggregate as a single class, except



if voting by class or series is required by law or the matter involved affects only one class or series, in which case shares will be voted separately by class or series. Shares of all series have identical voting rights, except where, by law, certain matters must be approved by a majority of the shares of the affected series. There are no conversion or preemptive rights in connection with shares of the Company.

Fund shares will only be issued in large lots of 50,000 shares called Creation Units in exchange for an In-Kind Creation Basket plus a Cash Component. See "Purchase and Issuance of Fund shares in Creation Units" for a description regarding the Fund's issuance of Creation Units. All Fund shares when issued for the In-Kind Creation Basket and Cash Component will be fully paid and non-assessable. Fund shares are redeemable only in Creation Units. More detailed descriptions of the Company's redemption policies can be found in the Prospectus and under the heading ("Procedures for Redemption of Creation Units") below.

Company shares do not have cumulative voting rights, which means that the holders of more than 50% of the shares outstanding voting for the election of Directors can elect 100% of the Directors if the holders choose to do so, and, in that event, the holders of the remaining shares will not be able to elect any person or persons to the Board. The Company's Bylaws provide that the presence in person or by proxy of stockholders entitled to cast a majority of all votes entitled to be cast at a meeting shall constitute a quorum for the transaction of business at all meetings.

As a general matter, the Company will not hold annual or other meetings of the Company's shareholders. This is because the Bylaws of the Company provide for annual meetings only as required by the 1940 Act. Annual and other meetings may be required with respect to such additional matters relating to the Company as may be required by the 1940 Act, any registration of Company shares with the SEC or any state, or as the Directors may consider necessary or desirable. Each Director serves until the next meeting of shareholders called for the purpose of considering the re-election of such Director or the election of a successor to such Director.

There are no restrictions on the right of shareholders to retain or dispose of the Fund's shares, other than the possible future termination of the Fund. The Company or a series may be terminated by reorganization into another mutual fund or series or by liquidation and distribution of the assets of the Company or series. Unless terminated by reorganization or liquidation, the Fund will continue indefinitely.

## **EXCHANGE LISTING AND TRADING**

The Fund's shares will be listed on the NYSE Arca, subject to notice of issuance, and will trade on the NYSE Arca at market prices that may differ from the Fund's NAV. The only relationship that the NYSE Arca has with the Advisor, the Distributor or the Company in connection with the Fund is that the NYSE Arca lists the Fund's shares pursu-



ant to its listing agreement with the Company. The Fund's shares will trade on the NYSE Arca at the market price for the shares, which may be higher or lower than the NAV for the shares.

There can be no assurance that, in the future, the Fund's shares will continue to meet all of the NYSE Arca's listing requirements. The NYSE Arca may, but is not required to, delist the Fund's shares if: (1) following the initial 12-month period beginning upon the commencement of trading, there are fewer than 50 beneficial owners of the Fund's shares for 30 or more consecutive trading days; (2) the value of the Underlying Index related to the Fund is no longer calculated or available; or (3) such other event shall occur or condition exist that, in the opinion of the NYSE Arca, makes further dealings on the NYSE Arca inadvisable.

As with any stock traded on an exchange, purchases and sales of Fund shares will be subject to usual and customary brokerage commissions. The Company reserves the right to adjust the price levels of the Fund's shares (but not their value) in the future to help maintain convenient trading ranges for investors. Any adjustments would be accomplished through stock splits or reverse stock splits, and would have no effect on the net assets of the Fund.

### **BOOK ENTRY ONLY SYSTEM**

DTC acts as securities depository for the Fund's shares. Fund shares are registered in the name of the DTC or its nominee, Cede & Co., and deposited with, or on behalf of, DTC. Except in limited circumstances set forth below, certificates will not be issued for Fund shares. DTC is a limited-purpose trust company that was created to hold securities of its participants (the "DTC Participants") and to facilitate the clearance and settlement of securities transactions among the DTC Participants in such securities through electronic book-entry changes in accounts of the DTC Participants, thereby eliminating the need for physical movement of securities certificates. DTC Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, some of whom (and/or their representatives) own DTC. More specifically, DTC is owned by a number of its DTC Participants and by the NYSE and FINRA. Access to the DTC system is also available to others such as banks, brokers, dealers, and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly (the "Indirect Participants").

Beneficial ownership of Fund shares is limited to DTC Participants, Indirect Participants, and persons holding interests through DTC Participants and Indirect Participants. Ownership of beneficial interests in Fund shares (owners of such beneficial interests are referred to herein as "Beneficial Owners") is shown on, and the transfer of ownership is effected only through, records maintained by DTC (with respect to DTC Participants) and on the records of DTC Participants (with respect to Indirect



Participants and Beneficial Owners that are not DTC Participants). Beneficial Owners will receive from or through the DTC Participant a written confirmation relating to their purchase of Fund shares.

The Company recognizes DTC or its nominee as the record owner of all Fund shares for all purposes. Beneficial Owners of the Fund shares are not entitled to have Fund shares registered in their names, and will not receive or be entitled to physical delivery of share certificates. Each Beneficial Owner must rely on the procedures of DTC and any DTC Participant and/or Indirect Participant through which such Beneficial Owner holds its interests, to exercise any rights of a holder of Fund shares.

Conveyance of all notices, statements, and other communications to Beneficial Owners is effected as follows. DTC will make available to the Company upon request and for a fee a listing of Fund shares held by each DTC Participant. The Company shall obtain from each such DTC Participant the number of Beneficial Owners holding Fund shares, directly or indirectly, through such DTC Participant. The Company shall provide each such DTC Participant with copies of such notice, statement, or other communication, in such form, number and at such place as such DTC Participant may reasonably request, in order that such notice, statement or communication may be transmitted by such DTC Participant, directly or indirectly, to such Beneficial Owners. In addition, the Company shall pay to each such DTC Participant a fair and reasonable amount as reimbursement for the expenses attendant to such transmittal, all subject to applicable statutory and regulatory requirements.

Share distributions shall be made to DTC or its nominee as the registered holder of all Fund shares. DTC or its nominee, upon receipt of any such distributions, shall credit immediately DTC Participants' accounts with payments in amounts proportionate to their respective beneficial interests in the Fund as shown on the records of DTC or its nominee. Payments by DTC Participants to Indirect Participants and Beneficial Owners of Fund shares held through such DTC Participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in a "street name," and will be the responsibility of such DTC Participants.

The Company has no responsibility or liability for any aspect of the records relating to or notices to Beneficial Owners, or payments made on account of beneficial ownership interests in such Fund shares, or for maintaining, supervising, or reviewing any records relating to such beneficial ownership interests, or for any other aspect of the relationship between DTC and the DTC Participants or the relationship between such DTC Participants and the Indirect Participants and Beneficial Owners owning through such DTC Participants.

DTC may determine to discontinue providing its service with respect to the Fund at any time by giving reasonable notice to the Fund and discharging its responsibili-



ties with respect thereto under applicable law. Under such circumstances, the Fund shall take action either to find a replacement for DTC to perform its functions at a comparable cost or, if such replacement is unavailable, to issue and deliver printed certificates representing ownership of Fund shares, unless the Company makes other arrangements with respect thereto satisfactory to the NYSE Arca (or such other exchange on which Fund shares may be listed).

## **PURCHASE AND ISSUANCE OF FUND SHARES IN CREATION UNITS**

The Fund issues and sells Fund shares only in Creation Units on a continuous basis through the Distributor, without a sales load, at their NAV next determined after receipt, on any Business Day, of an order in proper form. The NAV of the Fund's shares is calculated each business day as of the close of regular trading on the NYSE Arca, generally 4:00 p.m., Eastern Time. The Fund will not issue fractional Creation Units. A Business Day is any day on which the NYSE Arca is open for business

## **FUND DEPOSIT**

The consideration for purchase of a Creation Unit from the Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (the "In-Kind Creation Basket") per each Creation Unit constituting a substantial replication of the stocks included in the Fund's Underlying Index and an amount of cash (the "Cash Component") consisting of a Balancing Amount (described below) and a Transaction Fee (also described below). Together, the In-Kind Creation Basket and the Cash Component constitute the Fund Deposit.

The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the In-Kind Creation Basket. It ensures that the NAV of the Fund Deposit (not including the Transaction Fee) is identical to the NAV of the Creation Unit it is used to purchase. If the Balancing Amount is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the In-Kind Creation Basket), then that amount will be paid by the purchaser to the Fund in cash. If the Balancing Amount is a negative number (i.e., the NAV per Creation Unit is less than the market value of the In-Kind Creation Basket), then that amount will be paid by the Fund to the purchaser in cash (except as offset by the Transaction Fee, described below).

The Fund, through the NSCC, makes available on each Business Day, immediately prior to the opening of business on the NYSE Arca (currently 9:30 a.m., Eastern time), a list of the names and the required number of shares of each security to be included in the current In-Kind Creation Basket portion of the Fund Deposit (based on information at the end of the previous Business Day). The Fund Deposit is applicable, subject to any adjustments as described below, in order to effect purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit com-



position is made available. The Fund reserves the right to accept a nonconforming Fund Deposit.

The identity and number of shares of the securities included in the In-Kind Creation Basket may change to reflect rebalancing adjustments and corporate actions by the Fund, or in response to adjustments to the weighting or composition of the component stocks of its Underlying Index. In addition, the Fund reserves the right to permit or require the substitution of an amount of cash—i.e., a “cash in lieu” amount—to be added to the Cash Component to replace any security included in the In-Kind Creation Basket that may not be available in sufficient quantity for delivery, may not be eligible for transfer through the Clearing Process (discussed below), or may not be eligible for trading by a Authorized Participant (as defined below) or the investor for which a Authorized Participant is acting. Brokerage commissions incurred in connection with acquisition of securities included in the In-Kind Creation Basket not eligible for transfer through the systems of DTC and hence not eligible for transfer through the Clearing Process will be an expense of the Fund. However, the Advisor, subject to the approval of the Board of Directors, may adjust the Transaction Fee (described below) to protect existing shareholders from this expense.

In addition to the list of names and numbers of securities constituting the current securities included in the In-Kind Creation Basket, the Fund, through the NSCC, also makes available on each Business Day the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of the Fund. All questions as to the number of shares of each security in the In-Kind Creation Basket and the validity, form, eligibility, and acceptance for deposit of any securities to be delivered shall be determined by the Company, and the Company’s determination shall be final and binding.

## **PROCEDURES FOR PURCHASE OF CREATION UNITS**

To be eligible to place orders with the Distributor and to purchase Creation Units from the Fund, you must be (i) a Authorized Participant, i.e., a broker dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the “Clearing Process”), a clearing agency that is registered with the SEC, or (ii) a DTC Participant, and in each case, must have executed an agreement with the Distributor governing the purchase and redemption of Creation Units (the “Participant Agreement”). Authorized Participants and DTC Participants are collectively referred to as “Authorized Participants.” Investors should contact the Distributor for the names of Authorized Participants that have signed a Participation Agreement. All Fund shares, however created, will be entered on the records of DTC in the name of Cede & Co. for the account of a DTC Participant.

All orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the NYSE Arca (“Closing Time”) (ordinarily 4:00 p.m., Eastern time) in each case on the date such order is placed



in order for creation of Creation Units to be effected based on the NAV of shares of the Fund as next determined on such date after receipt of the order in proper form. In the case of custom orders, the order must be received by the Distributor no later than 3:00 p.m. Eastern Time on the trade date. A custom order may be placed by an Authorized Participant in the event that the Fund permits the substitution of an amount of cash to be added to the Cash Component to replace any securities included in the In-Kind Creation Basket which may not be available in sufficient quantity for delivery or which may not be eligible for trading by such Authorized Participant or the investor for which it is acting or other relevant reason. The date on which an order to create Creation Units (or an order to redeem Creation Units, as discussed below) is placed is referred to as the "Transmittal Date." Orders must be transmitted by an Authorized Participant by telephone or other transmission method acceptable to the Distributor pursuant to procedures set forth in the Participant Agreement, as described below (see the Placement of Creation Orders Using Clearing Process and the Placement of Creation Orders Outside Clearing Process sections). Severe economic or market disruptions or changes, or telephone or other communication failure may impede the ability to reach the Distributor or an Authorized Participant.

All orders from investors who are not Authorized Participants to create Creation Units shall be placed with an Authorized Participant, as applicable, in the form required by such Authorized Participant. In addition, the Authorized Participant may request the investor to make certain representations or enter into agreements with respect to the order, e.g., to provide for payments of cash, when required. Investors should be aware that their particular broker may not have executed a Participant Agreement and that, therefore, orders to create Creation Units of the Fund have to be placed by the investor's broker through an Authorized Participant that has executed a Participant Agreement. In such cases there may be additional charges to such investor. At any given time, there may be only a limited number of broker-dealers that have executed a Participant Agreement. Those placing orders for Creation Units through the Clearing Process should afford sufficient time to permit proper submission of the order to the Distributor prior to the Closing Time on the Transmittal Date. Orders for Creation Units that are effected outside the Clearing Process are likely to require transmittal by the DTC Participant earlier on the Transmittal Date than orders effected using the Clearing Process. Those persons placing orders outside the Clearing Process should ascertain the deadlines applicable to DTC and the Federal Reserve Bank wire system by contacting the operations department of the broker or depository institution effectuating such transfer of the In-Kind Creation Basket and Cash Component.

**Placement of Creation Orders Using Clearing Process.** The Clearing Process is the process of creating or redeeming Creation Units through the Continuous Net Settlement System of the NSCC. Fund Deposits made through the Clearing Process must be delivered through an Authorized Participant that has executed a Participant



Agreement. The Participant Agreement authorizes the Distributor to transmit through the Custodian to NSCC, on behalf of the Authorized Participant, such trade instructions as are necessary to effect the Authorized Participant's creation order. Pursuant to such trade instructions to NSCC, the Authorized Participant agrees to deliver the requisite In-Kind Creation Basket and the Cash Component to the Fund, together with such additional information as may be required by the Distributor. An order to create Creation Units through the Clearing Process is deemed received by the Distributor on the Transmittal Date if (i) such order is received by the Distributor not later than the Closing Time on such Transmittal Date, and (ii) all other procedures set forth in the Participant Agreement are properly followed.

**Placement of Creation Orders Outside Clearing Process.** Fund Deposits made outside the Clearing Process must be delivered through a DTC Participant that has executed a Participant Agreement with the Distributor. A DTC Participant who wishes to place an order creating Creation Units to be effected outside the Clearing Process must state in such order that the DTC Participant is not using the Clearing Process and that the creation of Creation Units will instead be effected through a transfer of securities and cash directly through DTC. The Fund Deposit transfer must be ordered by the DTC Participant on the Transmittal Date in a timely fashion so as to ensure the delivery of the requisite number of securities included in the In-Kind Creation Basket through DTC to the account of the Fund by no later than 11:00 a.m., Eastern time, of the next Business Day immediately following the Transmittal Date.

All questions as to the number of securities included in the In-Kind Creation Basket to be delivered, and the validity, form and eligibility (including time of receipt) for the deposit of any tendered securities, will be determined by the Fund, whose determination shall be final and binding. The amount of cash equal to the Cash Component must be transferred directly to the Custodian through the Federal Reserve Bank wire transfer system in a timely manner so as to be received by the Custodian no later than 2:00 p.m., Eastern time, on the next Business Day immediately following such Transmittal Date. An order to create Creation Units outside the Clearing Process is deemed received by the Distributor on the Transmittal Date if (i) such order is received by the Distributor not later than the Closing Time on such Transmittal Date; and (ii) all other procedures set forth in the Participant Agreement are properly followed. However, if the Custodian does not receive both the required securities included in the In-Kind Creation Basket and the Cash Component by 11:00 a.m. and 2:00 p.m., respectively, on the next Business Day immediately following the Transmittal Date, such order will be canceled. Upon written notice to the Distributor, such canceled order may be resubmitted the following Business Day using the Fund Deposit as newly constituted to reflect the then current In-Kind Creation Basket and Cash Component. The delivery of Creation Units so created will occur no later than the third (3rd) Business Day following the day on which the purchase order is deemed received by the Distributor.



Additional transaction fees may be imposed with respect to transactions effected outside the Clearing Process (through a DTC participant) and in the limited circumstances in which any cash can be used in lieu of In-Kind Creation Basket to create Creation Units. (See Creation Transaction Fee section below).

Creation Units may be created in advance of receipt by the Fund of all or a portion of the applicable securities included in the In-Kind Creation Basket as described below. In these circumstances, the initial deposit will have a value greater than the NAV of the Fund's shares on the date the order is placed in proper form since, in addition to available securities included in the In-Kind Creation Basket, cash must be deposited in an amount equal to the sum of (i) the Cash Component, plus (ii) 105% of the market value of the undelivered securities included in the In-Kind Creation Basket (the "Additional Cash Deposit"). The order shall be deemed to be received on the Business Day on which the order is placed provided that the order is placed in proper form prior to 4:00 p.m., Eastern time, on such date, and federal funds in the appropriate amount are deposited with the Custodian by 11:00 a.m., Eastern time, the following Business Day. If the order is not placed in proper form by 4:00 p.m. or federal funds in the appropriate amount are not received by 11:00 a.m. the next Business Day, then the order may be deemed to be canceled and the Authorized Participant shall be liable to the Fund for losses, if any, resulting therefrom. An additional amount of cash shall be required to be deposited with the Fund, pending delivery of the missing securities included in the In-Kind Creation Basket to the extent necessary to maintain the Additional Cash Deposit with the Fund in an amount at least equal to 115% of the daily marked to market value of the missing securities included in the In-Kind Creation Basket. To the extent that missing securities included in the In-Kind Creation Basket are not received by 1:00 p.m., Eastern time, on the third Business Day following the day on which the purchase order is deemed received by the Distributor or in the event a marked-to-market payment is not made within one Business Day following notification by the Distributor that such a payment is required, the Fund may use the cash on deposit to purchase the missing securities included in the In-Kind Creation Basket. Authorized Participants will be liable to the Fund for the costs incurred by the Fund in connection with any such purchases. These costs will be deemed to include the amount by which the actual purchase price of the securities included in the In-Kind Creation Basket exceeds the market value of such securities included in the In-Kind Creation Basket on the day the purchase order was deemed received by the Distributor plus the brokerage and related transaction costs associated with such purchases. The Fund will return any unused portion of the Additional Cash Deposit once all of the missing securities included in the In-Kind Creation Basket have been properly received by the Custodian or purchased by the Fund and deposited into the Fund. In addition, a transaction fee, as listed below, will be charged in all cases. The delivery of Creation Units so created will occur no later than the third Business Day following the day on which the purchase order is deemed received by the Distributor.



**Acceptance of Orders for Creation Units.** The Fund reserves the absolute right to reject a creation order transmitted to it by the Distributor in respect of the Fund if: (i) the order is not in proper form; (ii) the investor(s), upon obtaining the Fund shares ordered, would own 80% or more of the currently outstanding shares of the Fund; (iii) the securities included in the In-Kind Creation Basket delivered are not as disseminated for that date by the Custodian, as described above; (iv) acceptance of the In-Kind Creation Basket would have certain adverse tax consequences to the Fund; (v) acceptance of the Fund Deposit would, in the opinion of counsel, be unlawful; (vi) acceptance of the Fund Deposit would otherwise, in the discretion of the Fund or the Advisor, have an adverse effect on the Fund or the rights of beneficial owners; or (vii) in the event that circumstances outside the control of the Fund, the Custodian, the Distributor and the Advisor make it, for all practical purposes, impossible to process creation orders. Examples of such circumstances include acts of God; public service or utility problems such as fires, floods, extreme weather conditions and power outages resulting in telephone, telecopy and computer failures; market conditions or activities causing trading halts; systems failures involving computer or other information systems affecting the Fund, the Advisor, the Distributor, DTC, NSCC, the Custodian or any other participant in the creation process, and similar extraordinary events. The Distributor shall notify a prospective creator of a Creation Unit and/or the Authorized Participant acting on behalf of such prospective creator of its rejection of the order of such person. The Company, the Custodian, and the Distributor are under no duty, however, to give notification of any defects or irregularities in the delivery of Fund Deposits nor shall any of them incur any liability for the failure to give any such notification.

All questions as to the number of shares of each security in the In-Kind Creation Basket and the validity, form, eligibility, and acceptance for deposit of any securities to be delivered shall be determined by the Company, and the Company's determination shall be final and binding.

**Creation Transaction Fee.** To compensate the Company for transfer and other transaction costs involved in creation transactions through the Clearing Process, investors will be required to pay a fixed creation transaction fee, described below, payable to the Company regardless of the number of creations made each day. An additional charge of up to five (5) times the fixed transaction fee may be imposed for (i) creations effected outside the Clearing Process; and (ii) cash creations (to offset the Fund's brokerage and other transaction costs associated with using cash to purchase the requisite securities included in the In-Kind Creation Basket). Investors are responsible for the costs of transferring the securities constituting the In-Kind Creation Basket to the account of the Fund.

The Standard Creation/Redemption Transaction Fee for the Fund will be \$500. The Maximum Creation/Redemption Transaction Fee for the Fund will be \$3,000.



## PROCEDURES FOR REDEMPTION OF CREATION UNITS

**Redemption of Fund Shares in Creation Units.** Fund shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a Business Day. The Fund will not redeem shares in amounts less than Creation Units. Beneficial owners must accumulate enough shares in the secondary market to constitute a Creation Unit in order to have such shares redeemed by the Fund. There can be no assurance, however, that there will be sufficient liquidity in the public trading market at any time to permit assembly of a Creation Unit. Investors should expect to incur brokerage and other costs in connection with assembling a sufficient number of the Fund's shares to constitute a redeemable Creation Unit.

With respect to the Fund, the Custodian, through the NSCC, makes available prior to the opening of business on the NYSE Arca (currently 9:30 a.m., Eastern time) on each Business Day, the identity of the securities included in the In-Kind Redemption Basket that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. The In-Kind Redemption Basket may not be identical to the In-Kind Creation Basket on that day.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of the In-Kind Redemption Basket, as announced on the Business Day of the request for redemption received in proper form, plus or minus cash in an amount equal to the difference between the NAV of the Fund shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the In-Kind Redemption Basket (the "Cash Redemption Amount"), less a redemption transaction fee as listed below. In the event that the In-Kind Redemption Basket has a value greater than the NAV of the Fund shares, a compensating cash payment equal to the difference is required to be made by or through an Authorized Participant by the redeeming shareholder.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE Arca is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE Arca is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the SEC.

**Redemption Transaction Fee.** A redemption transaction fee is imposed to offset transfer and other transaction costs that may be incurred by the Fund. An additional variable charge for cash redemptions (when cash redemptions are available or specified) for the Fund may be imposed. Investors will also bear the costs of transferring the securities included in the In-Kind Redemption Basket from the Fund to their



account or on their order. Investors who use the services of a broker or other such intermediary in addition to an Authorized Participant to effect a redemption of a Creation Unit may be charged an additional fee for such services. The redemption transaction fees for the Fund is the same as the creation transaction fees set forth above.

**Placement of Redemption Orders Using Clearing Process.** Orders to redeem Creation Units through the Clearing Process must be delivered through an Authorized Participant that has executed the Participant Agreement. An order to redeem Creation Units using the Clearing Process is deemed received by the Fund on the Transmittal Date if (i) such order is received by the Transfer Agent not later than 4:00 p.m., Eastern time, on such Transmittal Date, and (ii) all other procedures set forth in the Participant Agreement are properly followed; such order will be effected based on the NAV of the Fund as next determined. An order to redeem Creation Units using the Clearing Process made in proper form but received by the Fund after 4:00 p.m., Eastern time, will be deemed received on the next Business Day immediately following the Transmittal Date and will be effected at the NAV next determined on such next Business Day. The requisite In-Kind Redemption Basket and the Cash Redemption Amount, if any, will be transferred by the third Business Day following the date on which such request for redemption is deemed received.

**Placement of Redemption Orders Outside Clearing Process.** Orders to redeem Creation Units outside the Clearing Process must be delivered through a DTC Participant that has executed the Participant Agreement. A DTC Participant who wishes to place an order for redemption of Creation Units to be effected outside the Clearing Process must state in such order that the DTC Participant is not using the Clearing Process and that redemption of Creation Units will instead be effected through transfer of Fund shares directly through DTC. An order to redeem Creation Units outside the Clearing Process is deemed received by the Fund on the Transmittal Date if (i) such order is received by the Transfer Agent not later than 4:00 p.m., Eastern time on such Transmittal Date; (ii) such order is accompanied or followed by the requisite number of shares of the Fund, which delivery must be made through DTC to the Custodian no later than 11:00 a.m., Eastern time (for the Fund Shares) on the next Business Day immediately following such Transmittal Date (the "DTC Cut-Off-Time") and 2:00 p.m., Eastern Time for the Cash Component, if any, owed to the Fund; and (iii) all other procedures set forth in the Participant Agreement are properly followed. After the Fund has deemed an order for redemption outside the Clearing Process received, the Fund will initiate procedures to transfer the requisite securities comprising the In-Kind Redemption Basket which are expected to be delivered within three Business Days and the Cash Redemption Amount, if any, owed to the redeeming Beneficial Owner to the Authorized Participant on behalf of the redeeming Beneficial Owner by the third Business Day following the Transmittal Date on which such redemption order is deemed received by the Fund.



The calculation of the value of the In-Kind Redemption Basket and the Cash Redemption Amount to be delivered/received upon redemption will be made by the Custodian on the Business Day on which a redemption order is deemed received by the Fund. Therefore, if a redemption order in proper form is submitted to the Transfer Agent by a DTC Participant not later than Closing Time on the Transmittal Date, and the requisite number of shares of the Fund is delivered to the Custodian prior to the DTC Cut-Off-Time, then the value of the In-Kind Redemption Basket and the Cash Redemption Amount to be delivered/received will be determined by the Custodian on such Transmittal Date. If, however, either (i) the requisite number of shares of the Fund is not delivered by the DTC Cut-Off-Time, as described above, or (ii) the redemption order is not submitted in proper form, then the redemption order will not be deemed received as of the Transmittal Date. In such case, the value of the In-Kind Redemption Basket and the Cash Redemption Amount to be delivered/received will be computed on the Business Day following the Transmittal Date provided that the Fund shares are delivered through DTC to the Custodian by 11:00 a.m. the following Business Day pursuant to a properly submitted redemption order.

If it is not possible to effect deliveries of the securities comprising the In-Kind Redemption Basket, the Fund may in its discretion exercise its option to redeem the Fund's shares in cash, and the redeeming Beneficial Owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash that the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Fund's shares based on the NAV of the Fund's shares next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions specified above, to offset the Fund's brokerage and other transaction costs associated with the disposition of securities comprising the In-Kind Redemption Basket). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities that differs from the exact composition of the securities comprising the In-Kind Redemption Basket, or cash in lieu of some securities added to the Cash Component, but in no event will the total value of the securities delivered and the cash transmitted differ from the NAV. Redemptions of the Fund's shares comprising the In-Kind Redemption Basket will be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver the specific securities comprising the In-Kind Redemption Basket upon redemption or could not do so without first registering the securities comprising the In-Kind Redemption Basket under such laws. An Authorized Participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the securities comprising the In-Kind Redemption Basket applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash. The Authorized Participant may request the redeeming Beneficial Owner of Fund shares to complete an order form or to enter into agreements with respect



to such matters as compensating cash payment, beneficial ownership of shares or delivery instructions.

## **X. DIVIDENDS AND DISTRIBUTIONS**

**General Policies.** Dividends from net investment income, if any, are declared and paid quarterly by the Fund. Distributions of net realized securities gains, if any, generally are declared and paid once a year, but the Fund may make distributions on a more frequent basis for the Fund to improve index tracking or to comply with the distribution requirements of the Internal Revenue Code of 1986, as amended (the "Code"), in all events in a manner consistent with the provisions of the 1940 Act.

Dividends and other distributions on shares are distributed, as described below, on a pro rata basis to Beneficial Owners of such shares. Dividend payments are made through DTC Participants and Indirect Participants to Beneficial Owners then of record with proceeds received from the Fund.

The Company makes additional distributions to the extent necessary (i) to distribute the entire annual taxable income of the Fund, plus any net capital gains and (ii) to avoid imposition of the excise tax imposed by Section 4982 of the Code. Management of the Company reserves the right to declare special dividends if, in its reasonable discretion, such action is necessary or advisable to preserve the status of the Fund as a regulated investment company ("RIC") or to avoid imposition of income or excise taxes on undistributed income.

**Dividend Reinvestment Service.** The Fund will not make the DTC book-entry dividend reinvestment service available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by Beneficial Owners of the Fund through DTC Participants for reinvestment of their dividend distributions. Investors should contact their brokers to ascertain the availability and description of these services. Beneficial Owners should be aware that each broker may require investors to adhere to specific procedures and timetables in order to participate in the dividend reinvestment service and investors should ascertain from their brokers such necessary details. If this service is available and used, dividend distributions of both income and realized gains will be automatically reinvested in additional whole shares issued by the Fund based on a payable date NAV.

## **XI. TAXATION**

The following supplements the tax information contained in the Prospectus.

For federal income tax purposes, the Fund is treated as a separate corporate en-



tity and has elected and intends to continue to qualify as a regulated investment company under Subchapter M of the Code. Such qualification generally relieves the Fund of liability for federal income taxes to the extent its earnings are distributed in accordance with applicable requirements. If, for any reason, the Fund does not qualify for a taxable year for the special federal tax treatment afforded regulated investment companies, the Fund would be subject to federal tax on all of its taxable income at regular corporate rates, without any deduction for dividends to shareholders. In such event, dividend distributions would be taxable as ordinary income to shareholders to the extent of the Fund's current and accumulated earnings and profits and would be eligible for the dividends received deduction available in some circumstances to corporate shareholders. Moreover, if the Fund were to fail to make sufficient distributions in a year, the Fund would be subject to corporate income taxes and/or excise taxes in respect of the shortfall or, if the shortfall is large enough, the Fund could be disqualified as a regulated investment company.

A 4% non-deductible excise tax is imposed on regulated investment companies that fail to currently distribute an amount equal to specified percentages of their ordinary taxable income and capital gain net income (excess of capital gains over capital losses), if any. The Fund intends to make sufficient distributions or deemed distributions of their ordinary taxable income and any capital gain net income prior to the end of each calendar year to avoid liability for this excise tax.

Dividends declared in October, November or December of any year payable to shareholders of record on a specified date in such months will be deemed to have been received by shareholders and paid by the Fund on December 31 of such year if such dividends are actually paid during January of the following year.

The Fund will be required in certain cases to withhold "backup withholding" on taxable dividends or gross proceeds realized upon sale paid to shareholders who have failed to provide a correct tax identification number in the manner required, who are subject to withholding by the Internal Revenue Service for failure properly to include on their return payments of taxable interest or dividends, or who have failed to certify to the Fund when required to do so either that they are not subject to backup withholding or that they are "exempt recipients." Backup withholding is not an additional tax and any amounts withheld may be credited against a shareholder's ultimate federal income tax liability if proper documentation is provided.

The foregoing discussion is based on federal tax laws and regulations which are in effect on the date of this Statement of Additional Information. Such laws and regulations may be changed by legislative or administrative action. Shareholders are advised to consult their tax advisors concerning their specific situations and the application of state, local and foreign taxes.



## XII. FINANCIAL STATEMENTS

The Fund's financial statement and the report thereon of Grant Thornton LLP, an independent registered public accounting firm, are set forth below.

### **Report of Independent Registered Public Accounting Firm**

Board of Directors  
TXF Funds, Inc.

We have audited the accompanying statement of assets and liabilities of TXF Funds, Inc. (the "Fund"), as of September 9, 2009. This financial statement is the responsibility of the Fund's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of assets and liabilities is free of material misstatement. The Fund is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion on the effectiveness of the Fund's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of assets and liabilities, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall statement of assets and liabilities presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the statement of assets and liabilities referred to above presents fairly, in all material respects, the financial position of the Fund as of September 9, 2009, in conformity with accounting principles generally accepted in the United States of America.

/S/ GRANT THORNTON LLP

Oklahoma City, Oklahoma  
September 16, 2009



**TXF FUNDS, INC.**  
**STATEMENT OF ASSETS AND LIABILITIES**  
**SEPTEMBER 9, 2009**

ASSETS

Cash .....	\$101,000
<b>TOTAL ASSETS</b> .....	<b>\$101,000</b>
Net Assets (1,000,000 shares authorized; \$0.001 par value; 2,500 shares outstanding) .....	\$101,000
Components of Net Assets: .....	
Paid-in Capital .....	\$101,000
Shares Outstanding .....	2,500
Net Asset Value per Share .....	40.40

See accompanying notes to financial statements.



TXF Funds, Inc.  
Notes to Financial Statements  
September 9, 2009

## **1. ORGANIZATION**

TXF Funds, Inc. (the "Company"), a Maryland Corporation, was formed on October 3, 2008 and has authorized capital of 1,000,000 shares of common stock, par value \$0.001 per share. The Company may designate one or more series of common stock and plans to offer multiple segregated portfolios (funds) of common stock. The Company has had no operations to date other than matters relating to its organization and registration as an open-end management investment company under the Investment Company Act of 1940, as amended, and the sale and issuance to The Geary Companies, Inc. of 2,500 shares of common stock.

The investment objective of the funds is to replicate as closely as possible, before fees and expenses, the performance of certain indexes created and developed by ISBC/SPADE Indexes LLC (The "Index Administrator") which have been licensed to TXF Funds, Inc. The initial fund will be TXF Large Companies ETF and will track the SPADE Texas Large Companies Index. The Company is considering offering TXF shares in two additional funds, TXF Mid Companies and TXF Small Companies, that will, along with TXF Large Companies, invest in separate portfolios of securities that substantially replicate benchmark indexes consisting of Texas based companies that are publicly traded and that have their headquarters or principal place of business in Texas or that generate a significant portion of their revenues in Texas

## **2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### ***Use of Estimates:***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts and disclosures in these financial statements. Actual results could differ from those estimates.

### ***Federal Income Tax:***

The Company intends to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code and to distribute substantially all of its net investment income and capital gains to its shareholders. Therefore, no federal income tax provision is required.



### **3. AGREEMENTS:**

#### ***Management Agreement:***

Under the terms of a Management Agreement, OOK Advisors, LLC (the "Advisor") serves as the Advisor, subject to the supervision of the Board of Directors, and will be responsible for arranging sub-advisory, transfer agency, custody, fund administration, and all other non-distribution related services for the funds to operate. The Advisor will also be responsible for employing any sampling strategy for the funds.

For the services it provides to the funds, the Advisor will receive an advisory fee equal to an annual rate of .65% of the fund's average daily net assets. The fees will be accrued daily and paid monthly. Out of the advisory fee, the Advisor pays all fees and expenses of the Transfer Agent, Administrator and Accounting Agent and Custodian. The funds will be responsible for the payment of all other expenses associated with its operation.

#### ***Administrator, Custodian, and Transfer Agent:***

Bank of New York, Mellon, N.A. will serve as the funds' administrator, custodian, and transfer agent.

#### ***Distributor Agreement:***

ALPS Distributors, Inc. will serve as the distributor of Creation Units for the funds on an agency basis. The Distributor will not maintain a secondary market in shares of the funds.

### **4. CAPITAL**

The funds issue and redeem shares on a continuous basis at net asset value in groups of 50,000 shares called "Creation Units." Creation Units of the funds are purchased and redeemed in kind. As a practical matter, only certain persons or entities known as "authorized participants" may purchase or redeem these Creation Units.

Except when aggregated in Creation Units, shares are not redeemable securities of the funds. Retail investors, therefore, generally will not be able to purchase or redeem shares directly from or with the funds. Rather most retail investors will purchase or sell shares in the secondary market with the assistance of a broker.



TXF Funds, Inc.  
Notes to Financial Statements  
September 9, 2009

A standard fixed transaction fee of \$500 will be charged for the creation or redemption of Creation Units of the funds regardless of the number of shares created or redeemed on the date of the transaction. An additional charge of up to five (5) times the fixed transaction fee may be imposed for (i) creations effected outside the standard process and (ii) cash creations. In nonstandard cases, the transaction fee will be up to \$3,000.

It is anticipated that the individual shares of the funds will be listed on the NYSE Arca. Individual shares of the funds can be bought and sold throughout the trading day like other shares of publicly traded securities. If shares are bought or sold in the secondary market, the investor will incur customary brokerage commissions and charges and may pay some or all of the spread between the bid and the offered price in the secondary market on each leg of a round trip (purchase and sale) transaction. It is anticipated that individual shares of the funds will trade in the secondary market at prices that may differ to varying degrees from the closing NAV of the funds.

## **5. CASH**

Cash at September 9, 2009, is deposited at the Bank of New York Mellon and BancFirst, N.A. in non-interest bearing accounts.

## **6. RELATED PARTIES AND ORGANIZATIONAL AND OFFERING COSTS**

At September 9, 2009, the sole member of the Advisor is the sole stockholder of the Company.

Expenses incurred in connection with organizing the Company and the offering of the shares will be paid by the Advisor or its parent company, The Geary Companies, Inc. The Company does not have an obligation to reimburse the Advisor or its affiliates for organization and offering expenses paid on its behalf. As of September 9, 2009, organization and initial offering expenses have totaled approximately \$153,000.

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The Company considers events or transactions that occur after the date of the statement of assets and liabilities but before the financial statements are issued to provide additional evidence relative to certain estimates or to identify matters that require additional disclosure. Subsequent events have been evaluated through September 16, 2009, the date of issuance of these financial statements.



# **TXF FUNDS, INC. PROXY VOTING POLICIES AND PROCEDURES**

These policies and procedures (and the guidelines that follow) apply to the voting of proxies by the Company with respect to all Portfolio Securities held by each of its Funds (each, "The Fund").

## **SECTION 1. PROXY VOTING GUIDELINES**

The fundamental precept followed by The Fund in voting proxies is to ensure that the manner in which shares are voted is in the best interest of The Fund's shareholders and the value of the investment.

Absent special circumstances of the types described in these policies and procedures, The Fund will generally exercise its proxy voting discretion in accordance with the guidelines set forth below.

## **SECTION 2. PROXY COMMITTEE**

The Fund's Proxy Committee has responsibility for the content, interpretation and application of the Proxy Guidelines. Membership of the Proxy Committee consists of certain investment and compliance personnel. Meetings of the Proxy Committee may be called by the Chairperson or, in his or her absence, by any two committee members. Meetings may be conducted in person or telephonically. Except as otherwise provided in Section 5, a majority of committee members present (in person or by proxy) will constitute a quorum for the transacting of business at any meeting. The approval of proxy votes or changes to these policies and procedures or the Proxy Guidelines may be made by majority vote of those present (in person or by proxy) at a meeting called for that purpose.

## **SECTION 3. APPLICATION OF PROXY GUIDELINES**

It is intended that the Proxy Guidelines will be applied with a measure of flexibility. In the exercise of such discretion the Proxy Committee may take into account a wide array of factors relating to the matter under consideration, the nature of the proposal, and the company involved. As a result, a proxy may be voted in one manner in the case of one company and in a different manner in the case of another where, for example, the past history of the company, the character and integrity of its management, the role of outside directors, and the company's record of producing performance for investors justifies a high degree of confidence in the company



and the effect of the proposal on the value of the investment. Similarly, poor past performance, uncertainties about management and future directions, and other factors may lead to a conclusion that particular proposals present unacceptable investment risks and should not be supported. In addition, the proposals should be evaluated in context. For example, a particular proposal may be acceptable standing alone, but objectionable when part of an existing or proposed package, such as where the effect may be to entrench management.

#### **SECTION 4. CONFLICTS OF INTEREST**

The Fund may occasionally be subject to conflicts of interest in the voting of proxies due to business or personal relationships it maintains with persons having an interest in the outcome of certain votes.

The Fund may also occasionally have business or personal relationships with other proponents of proxy proposals, participants in proxy contests, corporate directors or candidates for directorships.

The Fund seeks to address such conflicts of interest in various ways, including the following:

- I. The establishment, composition and authority of the Proxy Committee.
- II. Subject to paragraph III below, if the Proxy Committee determines that a particular proxy vote involves a potential conflict of interest between The Fund and a person having an interest in the outcome of that vote, it will obtain and follow the vote recommendations of an independent investment advisor, provided pursuant to these Policies and Procedures, with respect to such proxy issue unless the Proxy Committee determines, consistent with its duty of loyalty and care, that the interests of The Fund's shareholders would be better served by voting contrary to such vote recommendations. Any determination by the Proxy Committee under this paragraph II to vote a proxy issue in a manner contrary to such vote recommendations must be made by a vote of at least 70% of the then current members of the Proxy Committee.
- III. If the Proxy Committee determines that a particular proxy issue involves a conflict of interest so severe that the Proxy Committee is unable to exercise independent judgment on the voting of such proxy issue, the Proxy Committee may resolve the conflict of interest in any of the following ways:
  - Following the vote recommendation of an independent investment advisor provided pursuant to these policies and procedures.
  - Following the vote recommendation of an independent fiduciary appointed for



that purpose.

- Abstaining.

The method selected by the Proxy Committee may vary, consistent with its duty of loyalty and care, depending upon the facts and circumstances of each situation and the requirements of applicable law. Examples of proxy votes referred to in this paragraph III include, without limitation, voting proxies on securities issued by The Fund or its affiliates, and proxy votes on matters in which The Fund has a direct financial interest.

## **SECTION 5. PROXY VOTING RECORDS; DISCLOSURES TO THE FUND'S SHAREHOLDERS**

The Fund will maintain the following records relating to proxy votes cast under these policies and procedures:

- I. A copy of these policies and procedures.
- II. A copy of each proxy statement The Fund receives regarding Portfolio Securities.
- III. A record of each vote cast by The Fund.
- IV. A copy of any document created by the Proxy Committee that was material to making a decision how to vote proxies or that memorialized the basis for that decision.
- V. A copy of each written The Fund's shareholders request for information on how The Fund voted proxies and a copy of any written response by The Fund to any written or oral request for information on how The Fund voted proxies on behalf of the requesting The Fund's shareholders.

The foregoing records will be retained for such period of time as is required to comply with applicable laws and regulations. The Fund may rely on one or more third parties to make and retain the records referred to in items I and II above. The Proxy Committee will cause copies of the foregoing records, to be provided to those The Fund's shareholders upon request. It is generally the policy of The Fund not to disclose its proxy voting records to third parties, except as may be required by applicable laws and regulations.



# THE FUND

## PROXY VOTING GUIDELINES

### 1. THE BOARD OF DIRECTORS

#### A. Voting on Director Nominees in Uncontested Elections

The Fund generally votes for director nominees in uncontested elections absent countervailing factors such as a lack of director independence (see below) or chronic, unjustified absenteeism.

#### B. Director Independence

For any situations not already covered by a rule or regulation, The Fund will generally vote for shareholder proposals requesting that the board of a company be comprised of a majority of independent directors and will generally vote against shareholder proposals requesting that the board of a company be comprised of a supermajority of independent directors. The Fund generally votes against shareholder proposals that would require the appointment of a lead or presiding director unless the audit, compensation and nominating committees are not composed of independent persons. The Fund generally votes for shareholder proposals that request that the board audit, compensation and/or nominating committees include independent directors exclusively and withholds votes for the election of non-independent directors serving on an audit, compensation or nominating committee or board. In addition, The Fund generally leaves the choice of chairman to the board's discretion as The Fund's support for proposals that principal committees consist exclusively of independent directors and that the board be comprised of a majority of independent directors provides sufficient checks and balances.

For all situations that involve a NASDAQ or a NYSE listed company, The Fund will use the NASDAQ's or the NYSE's definition, respectively, of an independent director to determine a board candidate's status. In any other situation, The Fund will consider a board candidate or member to lack independence if the proposed director:

- a) Receives, or one of the proposed director's immediate family members receives, more than \$100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); such person is presumed not to be independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.
- b) Is affiliated with or employed by, or if one of the proposed director's immediate



family members is affiliated with or employed in a professional capacity by, a present or former auditor of the company; the proposed director will not be considered "independent" until three years after the end of either the affiliation or the auditing relationship.

c) Is employed, or one of the proposed director's immediate family members is employed, as an executive officer of another company where any of the listed company's present executives serves on that company's compensation committee; the proposed director will not be considered "independent" until three years after the end of such service or the employment relationship.

### **C. Stock Ownership Requirements**

The Fund generally votes against shareholder proposals requiring directors to own a minimum amount of company stock in order to qualify as a director, or to remain on the board.

### **D. Term of Office**

The Fund generally votes against shareholder proposals to limit the tenure of outside directors.

### **E. Director and Officer Indemnification and Liability Protection**

Proposals concerning director and officer indemnification and liability protection will be evaluated by The Fund on a case by case basis. The Fund generally votes for proposals providing indemnification protection to officers and directors, and for proposals limiting the liability of officers and directors for monetary damages, provided such proposals do not appear to conflict with applicable law and cover only future actions.

### **F. Charitable Contributions**

The Fund votes against shareholder proposals to eliminate, direct or otherwise restrict charitable contributions.

## **II. PROXY CONTESTS**

### **A. Voting for Director Nominees in Contested Elections**

Votes in a contested election of directors will be evaluated by The Fund on a case-by-case basis, considering the following factors:

- long-term financial performance of the target company relative to its industry;



- management's track record;
- background to the proxy contest;
- qualifications of director nominees (both slates);
- evaluation of what each side is offering shareholders as well as the likelihood that the proposed objectives and goals can be met; and
- stock ownership positions.

### ***B. Reimburse Proxy Solicitation Expenses***

Decisions to provide full reimbursement for dissidents waging a proxy contest will be made on a case-by-case basis. The Fund will generally support such proposals in cases where (i) The Fund votes in favor the dissidents and (ii) the proposal is voted on the same proxy as the dissident slate and, as such, is specifically related to the contested proxy at issue.

## **III. AUDITORS**

### ***Ratifying Auditors***

The Fund generally votes for proposals to ratify auditors, unless: an auditor has a financial interest in or association with the company, and is therefore not independent; or there is reason to believe that the independent auditor has rendered an opinion which is neither accurate nor indicative of the company's financial position.

The Fund generally votes against shareholder proposals that seek to restrict management's ability to utilize selected auditors, subject to the qualifications set forth above.

### ***IV. Proxy Contest Defenses***

#### ***A. Board Structure; Staggered vs. Annual Elections***

The Fund generally votes against proposals to classify the board and for proposals to repeal classified boards and to elect all directors annually.

#### ***B. Shareholder Ability to Remove Directors***

The Fund generally votes for proposals that provide that directors may be removed only for cause.



### **C. Cumulative Voting**

The Fund generally votes against proposals to eliminate cumulative voting, unless such proposals are intended to effectuate a majority voting policy.

The Fund generally votes for proposals to institute cumulative voting, unless the company has previously adopted a majority voting policy, or a majority voting shareholder proposal, consistent with The Fund's majority voting guidelines, is on the ballot at the same time as the cumulative voting proposal, in which case The Fund generally votes against such cumulative voting proposals.

### **D. Majority Voting**

In analyzing shareholder proposals calling for directors in uncontested elections to be elected by an affirmative majority of votes cast, The Fund focuses on whether or not the company has adopted a written majority voting (or majority withhold) policy that provides for a meaningful alternative to affirmative majority voting.

In cases where companies have not adopted a written majority voting (or majority withhold) policy, The Fund generally votes for shareholder majority voting proposals.

In cases where companies have adopted a written majority voting (or majority withhold) policy, The Fund generally votes against shareholder majority voting proposals, provided that the policy is set forth in the company's annual proxy statement and either:

- requires nominees who receive majority withhold votes to tender their resignation to the board;
- sets forth a clear and reasonable timetable for decision-making regarding the nominee's status; and
- does not contain any specific infirmities that would render it an ineffective alternative to an affirmative majority voting standard or otherwise provides a meaningful alternative to affirmative majority voting.

In determining the adequacy of a company's majority voting (or majority withhold) policy, The Fund may also consider, without limitation, any factors set forth in the policy that are to be taken into account by the board in considering a nominee's resignation and the range of actions open to the board in responding to the resignation (e.g., acceptance of the resignation, maintaining the director but curing the underlying causes of the withheld votes, etc.).



### ***E.Shareholder Ability to Call Special Meetings***

The Fund generally votes for proposals to restrict or prohibit shareholder ability to call special meetings, but will vote against such proposals and in favor of shareholder proposals to allow shareholders to call special meetings if the minimum ownership requirement is at least 15% of outstanding shares.

### ***F.Shareholder Ability to Act by Written Consent***

The Fund generally votes against proposals allowing shareholders to take action by written consent.

### ***G.Shareholder Ability to Alter the Size of the Board***

The Fund generally votes against proposals limiting management's ability to alter the size of the board.

## **V. TENDER OFFER DEFENSES**

### ***A. Poison Pills***

The Fund generally votes against shareholder proposals that ask a company to submit its poison pill for shareholder ratification.

The Fund will review on a case-by-case basis management proposals to ratify a poison pill.

### ***B. Fair Price Provisions***

The Fund will review votes case-by-case on fair price proposals, taking into consideration whether the shareholder vote requirement embedded in the provision is no more than a majority of disinterested shares.

The Fund generally votes for shareholder proposals to lower the shareholder vote requirement in existing fair price provisions.

### ***C. Greenmail***

The Fund generally votes for proposals to adopt anti-greenmail charter or bylaw amendments or otherwise restrict a company's ability to make greenmail payments.

The Fund votes on a case-by-case basis anti-greenmail proposals when they are bundled with other charter or bylaw amendments.



#### ***D. Unequal Voting Rights***

The Fund generally votes against dual class exchange offers.

The Fund generally votes against dual class recapitalizations.

#### ***E. Supermajority Shareholder Vote Requirement to Amend the Charter or Bylaws***

The Fund generally votes against management proposals to require a supermajority shareholder vote to approve charter and bylaw amendments.

The Fund generally votes for shareholder proposals to lower supermajority shareholder vote requirements for charter and bylaw amendments.

#### ***F. Supermajority Shareholder Vote Requirement to Approve Mergers***

The Fund generally votes against management proposals to require a supermajority shareholder vote to approve mergers and other significant business combinations.

The Fund generally votes for shareholder proposals to lower supermajority shareholder vote requirements for mergers and other significant business combinations.

### **VI. MISCELLANEOUS GOVERNANCE PROVISIONS**

#### ***A. Confidential Voting***

The Fund generally votes for proposals requiring confidential voting and independent vote tabulators.

#### ***B. Equal Access***

The Fund generally votes against shareholder proposals that would allow significant company shareholders equal access to management's proxy material in order to evaluate and propose voting recommendations on proxy proposals and director nominees, and in order to nominate their own candidates to the board.

#### ***C. Bundled Proposals***

The Fund votes on a case-by-case basis bundled or "conditioned" proxy proposals. In the case of items that are conditioned upon each other, we examine the benefits and costs of the packaged items. In instances when the joint effect of the conditioned items is not in shareholders' best interests, we vote against the proposals. If the combined effect is positive, we support such proposals.



#### ***D. Shareholder Advisory Committees***

The Fund votes on a case-by-case basis, proposals to establish a shareholder advisory committee.

### **VII. CAPITAL STRUCTURE**

#### ***A. Common Stock Authorization***

The Fund votes on a case-by-case basis, proposals to increase the number of shares of common stock authorized for issue.

#### ***B. Stock Distributions: Splits and Dividends***

The Fund generally votes for management proposals to increase common share authorization for a stock split, provided that the split does not result in an increase of authorized but unissued shares of more than 100% after giving effect to the shares needed for the split.

#### ***C. Reverse Stock Splits***

The Fund generally votes for management proposals to implement a reverse stock split, provided that the reverse split does not result in an increase of authorized but unissued shares of more than 100% after giving effect to the shares needed for the reverse split.

#### ***D. Blank Check Preferred Authorization***

Absent special circumstances (e.g., actions taken in the context of a hostile takeover attempt) indicating an abusive purpose, The Fund generally votes against proposals that would authorize the creation of new classes of preferred stock with unspecified voting, conversion, dividend and distribution, and other rights, stock unless the voting, conversion, dividend and distribution, and other rights are specified and the voting rights are limited to one vote per share.

#### ***E. Shareholder Proposals Regarding Blank Check Preferred Stock***

The Fund generally votes for shareholder proposals requiring blank check preferred stock placements to be submitted for shareholder ratification unless the shares are to be issued for the purpose of raising capital or making acquisitions.

#### ***F. Adjust Par Value of Common Stock***

The Fund generally votes for management proposals to reduce the par value of



common stock.

### **G. Preemptive Rights**

The Fund reviews on a case-by-case basis, proposals to create or abolish preemptive rights. In evaluating proposals on preemptive rights, The Fund looks at the size of a company and the characteristics of its shareholder base. The Fund generally opposes preemptive rights for publicly-held companies with a broad stockholder base.

### **H. Debt Restructurings**

The Fund reviews on a case-by-case basis, proposals to increase common and/or preferred shares and to issue shares as part of a debt restructuring plan. The Fund considers the following issues:

- Dilution — How much will ownership interest of existing shareholders be reduced, and how extreme will dilution to any future earnings be?
- Change in Control — Will the transaction result in a change in control of the company?
- Bankruptcy — Is the threat of bankruptcy, which would result in severe losses in shareholder value, the main factor driving the debt restructuring?

Generally, we approve proposals that facilitate debt restructurings unless there are clear signs of self-dealing or other abuses.

### **I. Share Repurchase Programs**

The Fund generally votes for management proposals to institute open-market share repurchase plans in which all shareholders may participate on equal terms.

## **VIII. EXECUTIVE AND DIRECTOR COMPENSATION**

The Fund votes on a case-by-case basis on executive and director compensation plans. The Fund generally votes against compensation plans if

- a. The exercise price is less than 100% of fair market value at the time of grant; or
- b. The company has repriced underwater stock options during the past three years; or

### **A. OBRA-Related Compensation Proposals**



- **Amendments that Place a Cap on Annual Grant or Amend Administrative Features**

The Fund generally votes for plans that simply amend shareholder-approved plans to include administrative features or place a cap on the annual grants any one participant may receive to comply with the provisions of Section 162(m) of OBRA.

- **Amendments to Added Performance-Based Goals**

The Fund generally votes for amendments to add performance goals to existing compensation plans to comply with the provisions of Section 162(m) of OBRA.

- **Amendments to Increase Shares and Retain Tax Deductions Under OBRA**

Votes on amendments to existing plans that would both increase shares reserved AND qualify the plan for favorable tax treatment under the provisions of Section 162(m) will be evaluated by The Fund on a case-by-case basis.

- **Approval of Cash or Cash-and-Stock Bonus Plans**

The Fund generally votes for cash or cash-and-stock bonus plans to exempt the compensation from taxes under the provisions of Section 162(m) of OBRA.

### ***B. Shareholder Proposals to Limit Executive and Director Pay***

The Fund generally votes against shareholder proposals that seek additional disclosure of executive and director pay information.

The Fund votes on a case-by-case basis all other shareholder proposals that seek to limit executive and director pay.

### ***C. Golden and Tin Parachutes***

The Fund generally votes against shareholder proposals to have golden and tin parachutes submitted for shareholder ratification.

### ***D. Employee Stock Ownership Plans (ESOPs) and Other Broad-Based Employee Stock Plans***

The Fund generally votes for proposals to approve an ESOP or other broad-based employee stock purchase or ownership plan, or to increase authorized shares for such existing plans, except in cases when the number of shares allocated to such plans is "excessive" (i.e., generally greater than ten percent (10%) of outstanding shares).



### ***E. 401(k) Employee Benefit Plans***

The Fund generally votes for proposals to implement a 401 (k) savings plan for employees.

### ***F. Director Retirement Benefits***

The Fund generally votes for shareholder proposals requesting companies cease to pay retirement benefits to directors.

## **IX. STATE OF INCORPORATION**

### ***A. Voting on Reincorporation Proposals***

Proposals to change a company's state of incorporation will be examined by The Fund on a case-by-case basis.

## **X. MERGERS AND CORPORATE RESTRUCTURINGS**

### ***A. Mergers and Acquisitions***

Votes on mergers and acquisitions will be considered by The Fund on a case-by-case basis, taking into account at least the following:

- anticipated financial and operating benefits;
- offer price (cost vs. premium);
- prospects of the combined companies;
- how the deal was negotiated; and
- changes in corporate governance and their impact on shareholder rights.

### ***B. Corporate Restructuring***

Votes on corporate restructuring proposals, including minority squeezeouts, leveraged buyouts, spin-offs, liquidations, and asset sales will be considered by The Fund on a case-by-case basis.

### ***C. Spin-offs***

Votes on spin-offs will be considered by The Fund on a case-by-case basis depending on the tax and regulatory advantages, planned use of sale proceeds, market



focus, and managerial incentives.

#### ***D. Asset Sales***

Votes on asset sales will be made by The Fund on a case-by-case basis after considering the impact on the balance sheet/working capital, value received for the asset, and potential elimination of diseconomies.

#### ***E. Liquidations***

Votes on liquidations will be made by The Fund on a case-by-case basis after reviewing management's efforts to pursue other alternatives, appraisal value of assets, and the compensation plan for executives managing the liquidation.

#### ***F. Appraisal Rights***

The Fund generally votes for proposals to restore, or provide shareholders with, rights of appraisal.

#### ***G. Changing Corporate Name***

The Fund generally votes for changing the corporate name.

#### ***H. Adjourn Meeting***

The Fund generally votes against proposals giving management discretion to adjourn a meeting of shareholders in order to solicit additional votes.

### **XI. SOCIAL AND ENVIRONMENTAL ISSUES**

The Fund generally supports the position of a company's board of directors when voting on shareholder initiated social and environmental proposals. Although The Fund acknowledges that the economic and social considerations underlying such proposals are often closely intertwined, we believe that in most cases the management group and elected directors are best positioned to make corporate decisions on these proposals.

