



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 16, 2011

Mr. Jack P. Drogin, Esq.
Schiff Hardin LLP
1666 K Street N.W., Suite 300
Washington, DC 20006

**Re: WisdomTree Managed Futures Strategy Fund
File No. TP 10-41**

Dear Mr. Drogin:

In your letter dated August 16, 2011, as supplemented by conversations with the staff of the Division of Trading and Markets (“Staff”), you request on behalf of WisdomTree Trust (the “Trust”) and WisdomTree Managed Futures Strategy Fund (the “Fund”) relief from Rule 10b-17 under the Securities Exchange Act of 1934, as amended (“Exchange Act”). We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as in your letter, unless we note otherwise.

Response:

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the concerns that the Commission raised in adopting Rule 10b-17 generally will not be implicated if exemptive relief is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.*

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but

* We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Trust. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

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in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive position. The Division expresses no view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority,



Josephine J. Tao
Assistant Director

Attachment



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Re: Request of WisdomTree Trust and the WisdomTree Managed Futures Strategy Fund
an Actively-Managed Fund for Exemptive Relief from Rule 10b-17 under the Securities
Exchange Act of 1934

Dear Ms. Tao:

SUMMARY OF REQUEST FOR RELIEF

We are writing on behalf of the WisdomTree Trust (“Trust”) and the WisdomTree Managed Futures Strategy Fund (the “Fund”), a series of the Trust described herein. The Trust and the Fund hereby request from the staff of the Division of Trading and Markets (“Staff”) of the Securities and Exchange Commission (“Commission”), exemptive relief from Rule 10b-17 under the Securities Exchange Act of 1934 (the “Exchange Act”).¹ The Fund is an exchange traded fund organized as an open-end management investment company (an “ETF”).

¹ The shares of the Fund (“Shares”) are listed on NYSE Arca, Inc. (the “Listing Exchange”), as described herein, pursuant to a proposed rule change by NYSE Arca, Inc. that was approved by the Commission pursuant to Section 19(b) of the Exchange Act. *See* Securities Exchange Act Release No. 63919 (February 16, 2011). In addition, the Commission granted the requested relief to the Trust from the application of certain sections of the Investment Company Act of 1940 and the rules promulgated thereunder (*see* Rel. No. IC-28471 (October 27, 2008)).

In the future, the Trust may determine to list Shares on a market other than the Listing Exchange (each such market, a “Market”). If the Trust lists Shares on a Market other than the Listing Exchange, Shares will be listed in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act. If the Shares also trade on a Market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Exchange Act Section 19(b).



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The Fund is actively managed. WisdomTree Asset Management, Inc. (“Adviser”), the investment adviser to the Fund, selects securities and other instruments consistent with the Fund’s investment objective and policies without reference to the composition of an index.²

The Staff, by delegated authority,³ has previously issued exemptive relief from Rule 10b-17 to index-based ETFs that are listed and traded on a national securities exchange and that meet certain other conditions (“Prior Index ETFs”).⁴ The Staff also has issued exemptive relief from Rule 10b-17 to non-index-based or “actively managed” ETFs, including actively managed ETFs issued by the Trust, that are listed and traded on a national securities exchange and that meet certain other conditions (the “Prior Actively Managed ETFs”).⁵ Prior Index ETFs and Prior Actively Managed ETFs may be referred to collectively as the “Prior ETFs.” The Fund operates in a manner substantially identical to the Prior ETFs.

² Mellon Capital Management (“Sub-Adviser”) serves as the sub-adviser for the Fund. The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility. ALPS Distributors, Inc. (“Distributor”) serves as the distributor of the Fund.

³ 17 CFR 200.30-3(a)(9).

⁴ See Letter from Josephine Tao to Paul, Hastings, Janofsky and Walker LLP regarding Class Relief for Combination Exchange Traded Funds, dated June 27, 2007; Letter from James A. Brigagliano to Wilkie Farr & Gallagher, LLP regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007 (the “Fixed Income Class Relief Letter”); Letter from James A. Brigagliano to PowerShares Exchange Traded Fund Trust regarding Class Relief for Exchange Traded Index Funds, dated October 24, 2006; Letter from James A. Brigagliano to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange LLC, dated August 17, 2001.

⁵ See letter from Josephine Tao to Dechert LLP, regarding Claymore Exchange-Traded Fund Trust, dated May 24, 2011. See, also, Letter from Victoria L. Crane to Schiff Hardin LLP regarding the WisdomTree Dreyfus Commodity Currency Fund, an Actively-Managed EFT, dated September 2, 2010; Letter from Josephine Tao to Schiff Hardin LLP regarding WisdomTree Emerging Markets Local Debt Fund an Actively Managed ETF, dated August 6, 2010; Letter from Josephine Tao to Morgan, Lewis & Bockius LLP, regarding AdvisorShares Trust Actively-Managed ETF/ WCM/BNY Mellon Focused Growth ADR, dated June 18, 2010; Letter from Josephine Tao to WisdomTree Trust Real Return Actively Managed ETF, dated May 27, 2010; Letter from James A. Brigagliano to Morgan, Lewis & Bockius LLP, regarding U.S. One Trust Actively-Managed ETF of ETFs, dated May 4, 2010; Letter from Josephine Tao to Grail Advisors ETF Trust Actively Managed Fixed Income Exchange Traded Fund, dated January 27, 2010; Letter from Josephine Tao to PIMCO ETF Trust Actively Managed Fixed Income Exchange Traded Fund, dated November 10, 2009; Letter from Josephine Tao to Grail Advisors ETF Trust, dated April 30, 2009, as revised May 6, 2009; Letter from Josephine Tao to WisdomTree Asset Management, Inc. regarding the WisdomTree Dreyfus Emerging Currency Fund, dated January 7, 2009; Letter from Josephine Tao to



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The letters for the Prior ETFs provided relief specific to the funds described therein and, therefore, the Trust and the Fund are not entitled to rely on those letters for relief. The Trust and the Fund note, however, that their proposal – the creation and issuance by an actively-managed investment company of shares that individually trade on a national securities exchange, but that can only be purchased from and redeemed with the issuing investment company in large aggregations – is no longer novel. For this reason, we do not believe that the Fund raises any significant new regulatory issues. In light of the many instances of exemptive relief previously issued, and based on discussions with the Staff, we hereby request exemptive relief from Rule 10b-17 under the facts and representations presented below.

THE TRUST AND THE FUND

The Trust was organized as a Delaware statutory trust on December 15, 2005 and is authorized to have multiple series or portfolios, one of which is the subject of this request. The Trust is registered with the Commission under the Investment Company Act of 1940 (“1940 Act”), as an open-end management investment company and currently offers over fifty (50) separate investment portfolios.

The Trust currently lists the Shares on NYSE Arca, Inc. (“Arca”). The Trust offers and sells such shares pursuant to an amendment to its Registration Statement (Registration Nos. 811-21864 and 333-132380) on Form N-1A under the 1940 Act and the Securities Act of 1933 (“1933 Act”). A Registration Statement describing the Fund (formerly known as the WisdomTree Managed Futures Fund) was filed with the SEC on June 5, 2009. An amendment to the Registration Statement was filed on July 22, 2010 and became effective on September 20, 2010.

The Fund seeks to provide investors with positive total returns in rising or falling markets. The Fund is actively managed using a quantitative, rules-based strategy to provide returns that correspond to the performance of the Diversified Trends Indicator™ (“Benchmark”). The Benchmark is a widely-used indicator designed to capture the economic benefit derived from rising or declining price trends in the commodity, currency and fixed-income markets.⁶ The Fund therefore attempts to capture economic

WisdomTree Asset Management, Inc. regarding WisdomTree Trust actively managed ETFs, dated May 9, 2008; Letter from James A. Brigagliano to Clifford Chance US LLP regarding PowerShares Actively Managed Exchange Traded Fund Trust, dated April 4, 2008; and Letter from Josephine J. Tao to Foley & Lardner LLP regarding Bear Stearns Active ETF Trust, dated March 24, 2008.

⁶ The Benchmark is a rules-based indicator designed to capture rising and falling price trends in the commodity and financial futures markets through long and short positions on U.S. listed futures contracts. The Benchmark consists of U.S. listed futures contracts on 16 tangible commodities and 8 financial futures. The 16 commodity futures contracts are: light crude oil, natural gas, RBOB gas, heating oil, soybeans, corn, wheat, gold, silver, copper, live cattle, lean hogs, coffee, cocoa, cotton and sugar. The 8 financial futures contracts are: the Australian dollar, British pound, Canadian dollar, Euro, Japanese yen, Swiss franc, U.S. Treasury Notes and U.S. Treasury bonds. Each contract is sometimes referred to as a “Component” of the Benchmark.



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Components that are similar in nature (such as gas and oil or gold and silver) are aggregated into "Sectors." There are nine commodity Sectors in the Benchmark: Energy, Grains, Precious Metals, Industrial Metals, Livestock, Coffee, Cocoa, Cotton, and Sugar. Each financial futures contract is considered to be its own Sector. As a result, there are eight financial Sectors in the Benchmark: the Australian dollar, British pound, Canadian dollar, Euro, Japanese yen, Swiss franc, U.S. Treasury Notes and U.S. Treasury bonds.

At the beginning of each year, the Benchmark is weighted evenly between commodity futures contracts and financial futures contracts assuming the Energy Sector is long. If the Energy Sector is flat, financial futures will represent approximately 61.5% of the weight of the Benchmark and commodity futures will represent approximately 38.5% of the weight of the Benchmark. At the beginning of 2011, the benchmark was weighted evenly: a 50% weight to commodity futures and a 50% weight to financial futures. At the beginning of each year, each Component and Sector also has a "Base Weight." Commodity Sector weights are based on, but not exactly proportional to, historical world production levels. Commodity Sectors that have higher historical production levels are weighted higher in the Benchmark. Weightings of the financial futures Sectors are based on, but not directly proportional to, historical gross domestic product ("GDP"). Larger economic regions (*i.e.*, Europe as measured by the Euro) should get a higher weighting than smaller regions (*i.e.*, Australia as measured by the Australian dollar).

The current Sector (and Component) Base Weights when the Energy Sector is long are as follows: Energy 18.75% (light crude 8.50%, natural gas 4.25%, RBOB 3.0%, heating oil 3.0%); Grains 11.50% (soybeans 5.0%, corn 4.0%, wheat 2.50%); Precious Metals 5.25% (Gold 3.50%, Silver 1.75%); Industrial Metals 5.0% (copper 5.0%); Livestock 5.00% (live cattle 3.0%, lean hogs 2.0%); Coffee 1.5%; Cocoa 1.0%; Cotton 1.0%; Sugar 1.0%; Euro 13.0%; Japanese Yen 12.0%; U.S. Treasury Note 7.50%, U.S. Treasury Bond 7.50%, British Pound 5.00%, Swiss Franc 2.0%, Australian Dollar 2.0%, and Canadian Dollar 1.00%.

The current Sector (and Component) Base Weights when the Energy Sector is flat are as follows: Energy 0% (light crude 0%, natural gas 0%, RBOB 0%, heating oil 0%); Grains 14.15% (soybeans 5.81%, corn 5.56%, wheat 2.79%); Precious Metals 6.46% (gold 4.11%, silver 2.36%); Industrial Metals 6.15% (copper 6.15%); Livestock 6.15% (live cattle 3.67%, lean hogs 2.49%); Coffee 1.85%; Cocoa 1.23%; Cotton 1.23%; Sugar 1.23%; Euro 16.0%; Japanese Yen 14.77%; British Pound 6.15%; Swiss Franc 2.46%; Australian Dollar 2.46%; and Canadian Dollar 1.23%; U.S. Treasury Note 9.23%; U.S. Treasury Bond 9.23%.

The weight of each Component and Sector in the Benchmark changes throughout each month based upon performance. At the end of each month, each Sector is reset back to its applicable Base Weight depending on whether the Energy Sector is long or flat. Within Sectors that have multiple Components, the weight of each Component relative to the others is allowed to fluctuate throughout the year and Component weights are reset back to their respective Base Weights only at year-end.

In order to capture both rising and falling price trends, at the end of each month each Sector in the Benchmark (other than the Energy Sector) is positioned as either "long" or "short." This determination is made

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benefit derived from rising and declining trends based on the “moving average” price changes of commodities, currencies and fixed income futures contracts over a recent period. In an attempt to capture these trends, the Fund’s investments are positioned as “long” or “short” (except for energy assets, which are always long or flat).

The Fund invests substantially all of its assets in a combination of U.S. government securities (as defined in Section 3(a)(42) of the Exchange Act, “Government Securities”)) and commodity- and currency-linked investments designed to correspond to the performance of the Benchmark. The Fund’s commodity- and currency-linked investments generally are limited to investments in listed futures contracts,⁷ forward currency contracts⁸ and swap transactions⁹ that provide exposure to commodities and

using an algorithm that compares the Sector’s monthly return to the Sector’s historic weighted moving average returns. If the Sector’s returns are above its moving average returns the Sector is positioned as “long” throughout the following month. If the Sector’s returns are below its moving average the Sector (except for Energy) is positioned as “short” throughout the following month. All Components within a Sector are held in the same direction. The value of a Sector and the value of the Benchmark should increase if a long position increases in value or if a short position decreases in value. For example, if a Sector is long in the Benchmark and the value of its Components goes up intra-month, the return of the Sector (and therefore the Benchmark) should increase. If a Sector is short in the Benchmark, and the value of its Components goes down intra-month, the return of the Sector (and therefore the Benchmark) should increase.

The Energy sector and its Components may never be positioned short within the Benchmark. The Benchmark’s methodology provides that, due to significant levels of continuous consumption, limited reserves and other factors, the Energy sector can only be long or flat (*i.e.*, no exposure) within the Benchmark. If the Energy Sector is flat then the weighting of the other Sectors and Components within the Benchmark is increased on a pro-rata basis. As a result, when Energy is flat, financial futures will represent approximately 61.5% of the weight of the Benchmark and commodities will represent approximately 38.5% of the weight of the Benchmark. When Energy is long, financial futures and commodity futures each represent 50% of the weight of the Benchmark.

⁷ The Fund’s investment in commodity futures contracts will be limited to contracts on some of the most actively traded commodities. As of May 31, 2011, the twelve commodity futures contracts that are given the greatest weighting in the Benchmark, and their three month Average Daily Dollar Volume (“ADDV”) were: high grade copper (6.15% weight; ADDV \$3,496,834,258); soybeans (5.73% weight; ADDV \$6,207,937,880); corn (5.55% weight; ADDV \$6,166,323,674); gold (4.12% weight; ADDV \$23,605,185,285); live cattle (3.68% weight; ADDV \$1,124,552,326); wheat (2.87% weight; ADDV \$2,208,465,724); lean hogs (2.47% weight; ADDV \$586,369,564); silver (2.34% weight; ADDV \$17,742,957,325); coffee (1.85% weight; ADDV \$1,329,914,745); cotton (1.23% weight; ADDV \$889,099,030); sugar (1.23% weight; ADDV \$1,172,425,804); and cocoa (1.23% weight; ADDV \$337,205,534).

⁸ The listed currency futures contracts and forward currency contracts invested in by the Fund will primarily involve six of the world’s most liquid or actively-traded currencies (as well as the U.S. dollar through



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non-U.S. currencies. The Fund's investments in listed futures contracts, forward currency contracts and swap transactions are backed by investments in Government Securities, in an amount equal to the exposure of such contracts. The Fund does not invest directly in physical commodities. The Fund also may invest in commodity-linked notes.¹⁰

futures on Treasury bonds and 10 year notes), as measured by turnover in the most recent Triennial Central Bank Survey of Foreign Exchange and Derivative Market Activity by the Bank for International Settlements. As of May 31, 2011, the weighting of the financial futures in the Benchmark, and their respective three month ADDV was: euro (16.00% weight; ADDV \$53,895,633,949); Japanese yen (14.77% weight; ADDV \$18,405,280,332), U.S. Treasury note (9.23% weight; ADDV \$144,587,349,419); U.S. Treasury Bond (9.23% weight; ADDV \$40,116,451,561); British pound (6.15% weight; ADDV \$11,355,739,401); Australian dollar (2.46% weight; ADDV US\$10,992,766,887); Swiss franc (2.46% weight; ADDV \$6,010,417,982) and Canadian dollar (1.23% weight; ADDV US\$8,235,898,419). Unlike the futures contracts in which the Fund invests, the forward currency contracts in which the Fund invests are not listed or traded on an exchange. Nevertheless, because there is an active market for the non-U.S. currencies underlying the forward contracts, as well as an active market for listed currency futures contracts, there is an active market for the forward currency contracts and pricing information for such contracts and the underlying currencies is readily available from brokers and other market participants. The Trust currently operates six currency funds that use forward currency contracts extensively in order to achieve their respective investment objectives (*see e.g.*, Letter from Josephine Tao to WisdomTree Asset Management, Inc. regarding the WisdomTree Dreyfus Emerging Currency Fund, dated January 7, 2009). The Fund's use of forward currency contracts will be substantially identical to the use of such contracts by the existing WisdomTree currency funds.

⁹ The Fund may enter into over-the-counter swap transactions based on the return of the Benchmark, any subset of the benchmark or any Component in the Benchmark. As noted, the commodities, currencies, and listed futures contracts that comprise the Benchmark are heavily traded. In addition, the Benchmark is widely-followed and currently serves as the basis for a range of investment products, including funds, swap contracts and other derivatives. As a result, it is expected that there will be an active market for swap transactions based on the Benchmark or any Component of the Benchmark. Intra-day and end-of-day prices are readily available for the Benchmark and the commodities, currencies, and listed futures contracts reflected in the Benchmark through Bloomberg, other major market data providers and broker-dealers. As a result, information necessary to evaluate the value of any swap transactions entered into by the Fund will be readily available to market participants. The Fund's use of swap transactions will be substantially identical to the use of such transactions by the WisdomTree Trust Real Return Fund (*see* Letter from Josephine Tao to WisdomTree Trust Real Return Actively Managed ETF, dated May 27, 2010).

¹⁰ The Fund may invest in commodity-linked notes, which are over-the-counter debt instruments, typically issued by a bank or broker-dealer, that are designed to provide cash flows linked to the value of the Benchmark or the commodity futures underlying the Benchmark. Commodity-linked notes provide exposure, which may include long and/or short exposure, to the investment returns of commodities markets without investing directly in the underlying physical commodities. The performance of these notes is determined by the price movement of the commodities or commodity futures contracts underlying the note. The Fund's overall investment in swaps and



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The Fund achieves exposure to Government Securities primarily through investment in two year and ten year U.S. Treasury securities and listed futures contracts on Treasury securities. In addition, the Fund invests in Government Securities and money market instruments with remaining maturities of one year or less, as well as cash and cash equivalents, in order to collateralize its listed futures contracts, forward currency contracts or swaps or for other purposes. All money market securities acquired by the Fund are rated investment grade or, if unrated, deemed by the Fund's investment adviser to be of equivalent quality. The Fund generally expects to maintain an average portfolio maturity of 90 days or less on its investments in money market and Government Securities used for managing its cash collateral.

The Fund seeks to gain exposure to the commodity and currency markets, in whole or in part, through investment in a wholly-owned Subsidiary organized as a corporation in the Cayman Islands.¹¹ The Subsidiary intends to invest all of its assets in a combination of (i) listed futures contracts on commodities, non-U.S. currencies or U.S. Treasury securities, (ii) forward currency contracts, (iii) swap contracts, (iv) commodity-linked notes, and (v) Government Securities and money market instruments held for investment or that serve as margin or collateral for its commodity or currency exposure. The Subsidiary's financial statements will be consolidated into the financial statements of the Fund. For all practical purposes, the portfolio investments of the Subsidiary are the portfolio holdings of the Fund for SEC reporting purposes. The Subsidiary's and Fund's portfolio investments are made available prior to the start of trading each day and are publicly disclosed (at no charge) on a daily basis on the Fund's website. As such, the holdings of the Fund and the Subsidiary are as transparent to investors as the holdings of the Prior ETFs. The Fund's investment in a Subsidiary is not expected to have any impact on (i) the process used to issue or redeem Creation Units (as defined below) of Fund shares, (ii) the cost to issue or redeem Creation Units of Fund shares, (iii) secondary market trading of Fund shares or (iv) the effectiveness of the Fund's arbitrage mechanism and the ability of persons authorized to purchase or redeem Creation Units of Shares directly from, or with, the Fund, and other investors to hedge their exposure to the Fund or take advantage of arbitrage opportunities with respect to Fund shares.¹²

commodity-linked notes will not exceed 30% of the Fund's assets.

¹¹ The Fund may invest up to 25% of its assets in the Subsidiary.

¹² Several Prior ETFs invest through off-shore subsidiaries. For example, the WisdomTree India Earnings Fund and the PowerShares India Portfolio, both of which commenced trading in 2008, each invests through an offshore subsidiary organized in Mauritius. Each of these products has gathered significant assets (approximately \$1.33 billion and \$518million, respectively, as of June 2, 2011) and traded successfully (2010 average daily trading volume of approximately 1,858,013 shares and 373,717 shares, respectively). WisdomTree is not aware of any significant issues caused by use of the offshore structure.



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The Fund's portfolio invested in commodity futures contracts is limited by the application of position limits adopted by the Commodity Futures Trading Commission ("CFTC") and U.S. futures exchanges and intended to prevent undue influence on prices by a single trader or group of affiliated traders.¹³ Position limits do not apply to forward contract trading or generally to trading on foreign exchanges. To the extent the Fund invests in futures contracts, it does so only in accordance with Rule 4.5 of the Commodity Exchange Act ("CEA"). The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the CEA.

With respect to foreign currency forward contracts, transactions by the Fund currently involve six of the world's most liquid or actively-traded currencies (as well as the U.S. dollar through futures on Treasury bonds and ten year notes), as measured by turnover in the most recent Triennial Central Bank Survey of Foreign Exchange and Derivative Market Activity in April 2010 (published in September 2010), coordinated by the Bank for International Settlements ("BIS Survey").¹⁴ Given the size and liquidity of the foreign exchange markets, any trading activities of the Trust are not expected to have an impact on the relevant prices, and the average daily trading volume of any of the currencies underlying the Trust's forward contracts should exceed the \$1,000,000 average daily trading volume that is one of the elements of the exception from the provisions of Rules 101 and 102 of Regulation M for actively-traded securities.¹⁵

Share Issuance and Redemption

The Fund typically will issue and redeem its Shares only in aggregations of 50,000 Shares or multiples thereof ("Creation Units"), with a minimum market value of approximately \$1,000,000. Shares are not individually redeemable; only Shares combined into Creation Units will be redeemable. The Fund's initial NAV of Shares was established at a level convenient for trading purposes.¹⁶ Purchasers of

¹³ The CFTC has jurisdiction to establish position limits with respect to all commodities futures and has established position limits for all agricultural commodities.

¹⁴ According to the 2010 BIS Survey, the average daily turnover in the foreign exchange markets in April 2010 was \$4.0 trillion.

¹⁵ See Rules 101 and 102 of Regulation M; 17 CFR §§ 242.101 and 102.

¹⁶ The Trust believes that a convenient trading range is between \$25 - \$100 per Share, and the Trust reserves the right to declare a share split, or a reverse share split, if the trading price over time deviates significantly from such price range. Each shareholder will have one vote per Share.



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Creation Units are able to unbundle the Creation Units into the individual Shares comprising such Creation Unit.

It is not expected that the Fund's Distributor will maintain a secondary market in individual Shares. The Listing Exchange has designated one or more member firms to act as a "Lead Market Maker" responsible for maintaining depth and quality of trading in the Shares. The "Lead Market Maker" has quote and execution obligations and the responsibility for keeping tight spreads in the Shares. The Shares trade on the Listing Exchange in a manner similar to the shares of the Prior ETFs that are listed on Arca or another Market.¹⁷

Shares are registered in book-entry form only; the Fund does not issue individual certificates for Shares. The Depository Trust Company ("DTC") serves as securities depository for Shares and DTC or its nominee is the record or registered owner of all outstanding Shares. Beneficial ownership of Shares is shown on the records of DTC or a broker-dealer that is a participant in DTC (a "DTC Participant"). Beneficial owners of Shares ("Beneficial Owners") receive, at the Fund's expense, all of the statements, notices, and reports required under the 1940 Act and other applicable laws ("Required Materials").

The Trust understands that under existing industry practice, in the event the Trust requests any action of Beneficial Owners of Shares, or a Beneficial Owner desires to take any action that DTC, as the record owner of all outstanding Shares, is entitled to take, DTC would authorize the DTC Participants to take such action and that the DTC Participants would authorize the indirect participants and Beneficial Owners acting through such DTC Participants to take such action and would otherwise act upon the instructions of Beneficial Owners owning Shares through them. As described above, the Trust recognizes DTC or its nominee as the record owner of Shares for all purposes.

Accordingly, to exercise any rights of a holder of Shares, each Beneficial Owner must rely upon the procedures of (1) DTC, (2) DTC Participants and (3) brokers, dealers, banks and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly, through which such Beneficial Owner holds its interest. Moreover, because the Trust's records reflect ownership of Shares by DTC only, the Trust will furnish the Required Materials to the DTC Participants who, in turn, will be responsible for distributing them to the Beneficial Owners. This arrangement is identical to that of all Prior ETFs.

¹⁷ The Trust expects that the trading of Shares on any other Market would be conducted in a similar manner.

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Disclosure Documents

The primary disclosure documents with respect to the Shares is the Prospectus for the Fund. As with all investment company securities, the purchase of Shares in Creation Units from any Fund will be accompanied or preceded by a Prospectus.¹⁸

With respect to disclosure in the Prospectus concerning the non-redeemability of Shares, the Trust and the Fund observe the following policies: (1) the term “mutual fund” is not used except to compare and contrast the Trust or the Fund with conventional mutual funds; (2) the term “open-end management investment company” is used in the Prospectus only to the extent required by Form N-1A or other securities law requirements and this phrase is not included on the prospectus cover page or summary; (3) the front cover page of the Prospectus and the prospectus summary includes a distinct paragraph or paragraphs setting forth the fact that Shares are listed on a Market and are individually non-redeemable; (4) the Prospectus discloses that the owners of Shares may acquire those Shares from the Fund, and tender those Shares for redemption to the Fund, only in Creation Units; and (5) the Prospectus clearly discloses that individual Shares prices may be below, above, or at the most recently calculated NAV.

REQUEST FOR RELIEF

The Trust and the Fund request that the Staff grant exemptive relief from Exchange Act Rule 10b-17. As noted above, this requested relief is substantially similar to relief granted to the Prior ETFs currently trading on a Market and to the other series of the Trust.¹⁹

Rule 10b-17 requires an issuer of a class of publicly traded securities to give notice of certain specified actions (e.g., dividends, stock splits, rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Specifically, Rule 10b-17(b)(1)(v)(a-b) requires such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share,²⁰ and (b) for in-kind

¹⁸ The Trust notes that prospectus delivery is not required in certain instances, including purchases of Shares by an investor who has previously been delivered a prospectus (until such prospectus is supplemented or otherwise updated) and unsolicited brokers' transactions in Shares (pursuant to Section 4(4) of the 1933 Act). Also, firms that do incur a prospectus-delivery obligation with respect to Shares will be reminded that under Securities Act Rule 153, a prospectus-delivery obligation under Section 5(b)(2) of the Securities Act owed to a member of the Market in connection with a sale on such Market, is satisfied by the fact that the Prospectus are available at such Market upon request. The Prospectus also will note that the prospectus delivery mechanism provided in Rule 153 is only available with respect to transactions on the Market.

¹⁹ See notes 4 and 5, *supra*.

²⁰ The rule permits a reasonable approximation of the per share distribution to be provided if exact amounts cannot be given because of existing conversion rights which may be exercised during the notice period and may

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distributions, the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of such dividend or distribution. Paragraph (c) of the Rule, however, states that the Rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act. Except for the fact that redemption is subject to the minimum condition of tendering a Creation Unit Aggregation of Shares, the Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the foregoing, that the Division of Investment Management issued an order permitting the Trust to issue shares with limited redeemability while still treating the Trust like any other open-end investment company.

In addition, compliance with Rule 10b-17(b)(1)(v)(a-b) would be impractical in light of the nature of the Fund.²¹ This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Because of this inability to project the amount of any dividend ten days in advance of a record date, applying the timing requirements of Rule 10b-17(b)(1)(v)(a-b) to the Trust would increase the chances that the Trust would mis-estimate the amount of any such dividend.²²

affect the per share cash distribution, as long as the actual per share distribution is subsequently provided on the record date.

²¹ We note that compliance with Rule 10b-17 would be similarly impractical for other ETFs that also continuously create and redeem shares.

²² As an investment company, the Trust is required by the Internal Revenue Code to distribute at least 98% of its ordinary income and capital gains during the calendar year. If the Trust declares too small a dividend, it will be charged an excise tax. If it declares too large a dividend, the excess could be considered a return of capital to investors. To avoid an over- or under-distribution of ordinary income, registered investment companies, including the Trust, must estimate: (i) the amount of ordinary income to be earned during the period from the date the dividend is declared to December 31; and (ii) the number of shares that will be outstanding as of the record date. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date would increase the period for estimating ordinary income and the number of outstanding shares, and thus increase the risk of an over- or under-distribution. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date also would increase the chance that the Trust would over- or under-distribute capital gains. Further, unlike ordinary income, the Trust does not have the problem of estimating the aggregate amount of capital gains it will earn between declaration date and year-end, but as noted above, requiring the Trust to declare the amount of a dividend ten days in advance of a record date would increase the chance that the Trust would mis-estimate the number of outstanding shares. This, in turn, would increase the chance that the Trust would mis-estimate the per share amount of capital gains it must distribute.



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The Trust represents that it will comply with the requirements of Rule 10b-17 (other than paragraph (b)(1)(v)(a-b)). The Trust further represents that as soon as practicable following the end of trading on the Listing Exchange on the day prior to the ex-date (but not later than the last time at which the Listing Exchange accepts such information on such date) with respect to any distribution made by the Fund, the Trust will provide notice to the Listing Exchange containing the information required in Rule 10b-17(b)(1)(v)(a-b).

In the proposing release for Rule 10b-17 (the "Proposing Release"),²³ the Commission stated:

It has been the experience of the Commission and the securities industry that the failure of a publicly held company to provide a timely announcement of the record date with respect to these types of rights has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failure, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of such rights and were thus unable to take necessary steps to protect their interests. Further, sellers who have received the benefits of such rights as recordholders on the specified record date after having disposed of their securities, have also disposed of the cash or stock dividends or other rights received as such recordholders without knowledge of possible claims of purchasers of the underlying security to those rights.... In many instances, innocent buyers and sellers have suffered losses. In addition, some issuers have made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.

We respectfully submit that none of these concerns raised by the Commission in the Proposing Release²⁴ will be implicated if the requested relief is granted. As set forth above, the Trust will comply with the requirements of Rule 10b-17 except for the timing requirements for notification of the actual amounts of the distributions under Rule 10b-17(b)(1)(v)(a-b). Accordingly, market participants will receive timely notification of the existence and timing of a pending distribution, and will be able to plan their transactions in Fund shares accordingly. As a result, there should be no confusion or opportunity for manipulation regarding parties' rights to receive distributions, which concerns inspired the Commission to propose and adopt Rule 10b-17. Therefore, the requested relief concerning the timing requirements of Rule 10b-17(b)(1)(v)(a-b) is consistent with the purposes underlying the adoption of Rule 10b-17 as outlined in the Proposing Release and the Adopting Release. The exemption under paragraph (c) of Rule 10b-17, which covers open-end investment companies with fully redeemable shares, thus should be applicable to the Trust with respect to the timing requirements of Rule 10b-17(b)(1)(v)(a-b).

²³ Exchange Act Release No. 9076 (February 17, 1971).

²⁴ The foregoing concerns were largely reiterated by the Commission in the release adopting Rule 10b-17. See Exchange Act Release No. 9192 (June 7, 1971) (the "Adopting Release").

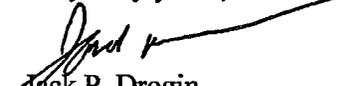


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Based on the foregoing, the Trust respectfully requests that the Commission and the Division of Trading and Markets grant the relief requested herein. Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call the undersigned at (202) 778-6422.

Very truly yours,



Jack P. Drogin

Cc: Daniel Staroselsky
Richard F. Morris