

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82234; File No. TP 18-04)

December 7, 2017

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to Certain Index-Based ETFs Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated December 7, 2017 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for John Hancock Exchange-Traded Fund Trust (the “Trust”) on behalf of the Trust, John Hancock Multifactor Consumer Discretionary ETF, John Hancock Multifactor Consumer Staples ETF, John Hancock Multifactor Developed International ETF, John Hancock Multifactor Energy ETF, John Hancock Multifactor Financials ETF, John Hancock Multifactor Healthcare ETF, John Hancock Multifactor Industrials ETF, John Hancock Multifactor Large Cap ETF, John Hancock Multifactor Materials ETF, John Hancock Multifactor Mid Cap ETF, John Hancock Multifactor Small Cap ETF, John Hancock Multifactor Technology ETF, and John Hancock Multifactor Utilities ETF (each, an “Initial Fund” and collectively, the “Initial Funds”), and any future series of the Trust that are advised by John Hancock Advisers, LLC, John Hancock Investment Management Services, LLC, or an entity controlling, controlled by, or under common control with John Hancock Advisers, LLC, or John Hancock Investment Management Services, LLC (each, a “Future Fund” and, together with the Initial Funds, the “Funds”), any national securities exchange on or through which shares issued by the Funds (“Shares”) are listed or may subsequently trade, Foreside Fund Services, LLC (the “Distributor”), and other persons or entities engaging in transactions in Shares (collectively, the “Requestors”) requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 10,000 shares

(“Creation Units”) or such other amount where the value of a Creation Unit is at least \$250,000 at the time of change (or issuance).

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (the “1940 Act”), as an open-end management investment company. Each Initial Fund is, and any Future Fund will be, an exchange-traded fund (an “ETF”) organized as a series of the Trust. Each of the Funds track, or will track, the performance of an underlying index (each, an “Index”). To track their respective Index, under normal circumstances, each of the Funds will invest at least 80% of their net assets in securities that comprise their respective Index. Each of the Funds may also invest up to 20% of their assets in securities and other instruments not included in their respective underlying Index but that the manager believes are correlated to the Index, as well as in, among other instruments, futures, options on futures, and other derivatives to obtain efficient market exposure, and cash, cash equivalents, and money market instruments. Each of the Funds may also invest to the extent permitted by the 1940 Act in other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other ETFs.

Currently, the Trust offers Shares of the Initial Funds in aggregations of at least 50,000 shares. The Trust is seeking relief to allow (1) the Initial Funds to reduce the size of the aggregations in which they create and redeem Shares to at least 10,000 shares or such other amount where the value of a Creation Unit will be at least \$250,000 at the time of change (or issuance), and (2) any Future Funds to create and redeem Shares in aggregations of at least 10,000 shares or such other amount where the value of a Creation Unit will be at least \$250,000 at the time of change (or issuance).

The Requestors represent, among other things, the following:

- Shares of each of the Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (“NAV”) next determined after receipt of a request for redemption by an Initial Fund or Future Fund, and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Funds will be listed and traded on NYSE Arca, Inc., or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the “Exchange”);¹
- The Funds seek to track the performance of their respective Index, all of the components of which will have publicly available last sale trade information;
- The Exchange will make available the market value of a Share, and the Exchange, market data vendors or other information providers will disseminate, every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;
- The Funds’ custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on the Exchange, the identities and quantities of a designated portfolio of securities determined by John Hancock Advisers, LLC, or Dimensional Fund Advisors LP (the “Deposit Instruments”) and any cash in lieu of all or a portion of the Deposit Instruments in exchange for which it will sell Creation Units (subject to possible amendment or correction);

¹ Further, Requestors represent in the Letter that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are, or will become, effective pursuant to Section 19(b) of the Exchange Act.

- The Trust anticipates that the arbitrage mechanism will be facilitated by the transparency of each of the Funds’ portfolio to the extent required by any relevant exemptive relief and the availability of the intra-day indicative value, the liquidity of securities held by each of the Funds and the ability to acquire such securities, as well as the arbitrageurs’ ability to create workable hedges;
- The Funds will meet each of the conditions of the Equity Class Relief Letter,² excluding the size required for Creation Unit aggregations and the minimum value of a Creation Unit at the time of change (or issuance);
- Each of the Funds will invest in securities that the Trust believes will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Trust believes that arbitrageurs are expected to take advantage of price variations between each of the Funds’ market price and their NAV; and
- The market price of Shares should not vary substantially from the Funds’ respective NAVs.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.³ However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules

² Letter from James A. Brigagliano, Acting Assoc. Dir., Div. of Mkt. Regulation, SEC, to Stuart M. Strauss, Clifford Chance US LLP (Oct. 24, 2006) (providing class relief for exchange-traded index funds of equity securities).

³ While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Funds and their securities do not meet those definitions.

101 and 102 to persons who may be deemed to be participating in a distribution of Shares of each of the Funds as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations⁴ of the Shares of the Funds and that the market price of Shares should not vary substantially from the Funds’ respective NAVs, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the

⁴ We confirm that, consistent with the treatment of actively managed ETFs, so long as shares of an index-based ETF are continuously redeemed at the NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund’s reliance, with respect to Exchange Act Rule 10b-17 and Regulation M, on the Equity Class Relief Letter, provided that all of the other conditions set forth in the Equity Class Relief Letter are met.

Funds, thus permitting persons participating in a distribution of Shares of each of the Funds to bid for or purchase such Shares during their participation in such distribution.⁵

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Funds and that the market price of Shares should not vary substantially from the Funds' respective NAVs, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

Rule 10b-17

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). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely

⁵ Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Funds and the receipt of securities in exchange by a participant in a distribution of Shares of the Funds would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.⁶

Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Funds, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the shares of the Funds.

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 in no

⁶ 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 Funds. This is because it is not possible for each of the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations of the Requestors in the Letter, that the provision of the notices as described in the Letter and subject to the conditions of this Order would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

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 determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or conditions may require a different response. In the event that any material change occurs in the facts or representations in the Letter, transactions in Shares of the Funds must be discontinued, pending presentation of the facts for our consideration. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), 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 exemption. This order should not be considered a 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.⁷

Eduardo A. Aleman
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(6) and (9).