

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82760; File No. TP 18-09)

February 22, 2018

Order Granting Limited Exemptions from Rule 10b-17(b)(1)(v)(A) and (B) and Rules 101 and 102 of Regulation M to Xtrackers High Yield Corporate Bond – Interest Rate Hedged ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated February 22, 2018 (the “Letter”), counsel for DBX ETF Trust (the “Trust”) on behalf of the Trust, Xtrackers High Yield Corporate Bond – Interest Rate Hedged ETF (the “Fund”), any national securities exchange on or through which shares issued by the Fund (“Shares”) are listed or may subsequently trade, ALPS Distributors, Inc. (the “Distributor”), and other persons or entities engaging in transactions in Shares (collectively, the “Applicants”) requested exemptions, or interpretive or no-action relief, from Rule 10b-17(b)(1)(v)(A) and (B) under 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 50,000 shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (the “Commission”) under the Investment Company Act of 1940, as amended (the “1940 Act”), as an open-end management investment company. The Trust currently offers Shares of the Fund. The Fund is an exchange-traded fund (an “ETF”) organized as a series of the Trust. The Fund seeks to provide investment results that closely correspond, before fees and expenses, to the performance of the Solactive High Yield Corporate Bond – Interest Rate Hedged Index (the “Index”), which holds long positions in U.S. dollar-denominated high yield corporate bonds, and short positions in U.S. Treasury notes or bonds (“Treasury Securities”) of, in aggregate,

approximate equivalent duration to the high yield bonds.¹ The Fund tracks the Index by (a) holding high yield bonds and (b) obtaining short exposure to Treasury Securities via futures contracts (as a substitute for entering into short positions on Treasury Securities directly).

Recently the Index provider, Solactive AG, revised the methodology of the Index such that the long portion of the Index is constructed using the same methodology (and constituent securities) as the Solactive USD High Yield Corporates Total Market Index (the “Underlying Index”). Accordingly, for reasons of efficiency, the Fund will operate as an “ETF of ETFs” by seeking to track the Index by (a) holding shares of the Xtrackers USD High Yield Corporate Bond ETF (the “Underlying ETF”), whose investment objective is to track the performance of the Underlying Index (a separate series of the Trust), rather than invest directly in the high yield corporate bonds comprising the long portion of the Index,² and (b) continuing to obtain short exposure to Treasury Securities via futures contracts. Except to the extent that the Fund operates as an ETF of ETFs³ and obtains short exposure to Treasury Securities via futures contracts, the Fund will operate in a manner similar to the Underlying ETF.

¹ In the Letter, Applicants represent that, by taking these short positions, the Index seeks to mitigate the potential negative impact of rising Treasury interest rates (“interest rates”) on the performance of high yield bonds (conversely limiting the potential positive impact of falling interest rates). The Applicants further represent that these short positions are not intended to mitigate other factors influencing the price of high yield bonds, such as credit risk, which may have a greater impact than rising or falling interest rates.

² The Applicants represent in the Letter that, pursuant to past relief issued by Commission staff on similar facts, the Fund is permitted to replicate the Index by investing all or part of its assets in one or more Underlying ETFs, which seek to track the performance of the Index by investing at least 80% of their assets in securities included in the Index. The term “assets” means net assets, plus the amount of borrowing for investment purposes. See Letter from Courtney S. Thornton, Senior Counsel, Office of Inv. Mgmt. Regulation, SEC, to Margery K. Neale, Willkie Farr & Gallagher LLP (Oct. 22, 2008) (iShares Trust et al.).

³ The Applicants also represent that the Fund may, in very rare instances, invest directly in the individual securities of the Underlying Index instead of holding shares of the Underlying ETF if holding those individual securities would provide greater liquidity or other efficiencies to the Fund or if the Underlying ETF is no longer accepting purchases. In such event, the Fund will not operate as an ETF or ETFs. See infra note 7.

The Applicants represent, among other things, the following:

- Shares of the Fund 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 the Fund,⁴ and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund 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”);⁵
- The Exchange will make available the market value of a Share, and the Exchange or a market data vendor will disseminate, every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share through the facilities of the Consolidated Tape Association;
- The Fund’s Administrator, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security and the amount of the Cash

⁴ When permitted or required by the Fund, consideration for purchase of Creation Units may consist of a basket of securities and/or instruments (the “Deposit Securities”) with a deposit of a specified cash payment (the “Cash Component”), subject to changes from time to time by the DBX Advisors LLC with a view to the investment objective of the Fund. Together, the Deposit Securities and Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

⁵ Further, Applicants 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.

Component (or Cash Deposit) to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund;

- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, the ability to acquire such securities, and the arbitrageurs’ ability to create workable hedges;
- The Fund will meet each of the conditions of the Equity ETF Class Relief Letter,⁶ excluding the condition that the Fund consists of a basket of twenty or more individual securities that comprise the ETF basket (“Component Securities”), with no one Component Security constituting more than 25% of the total value of the ETF, and each Underlying ETF in which the Fund invests, as applicable, will meet all conditions set forth in one or more class relief letter;⁷
- The Fund will invest in securities that Applicants believe will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Applicants believe that arbitrageurs are expected to take advantage of price variations between the Fund’s market price and its NAV; and

⁶ Letter from James A. Brigagliano, 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).

⁷ See Letter from Josephine Tao, Assistant Dir., Div. of Trading & Mkts., to Domenick Pugliese, Esq., Paul, Hastings, Janofsky & Walker LLP (June 27, 2007) (Combination Exchange-traded Funds); Letter from James A. Brigagliano, Assoc. Dir., Div. of Mkt. Regulation, to Benjamin Haskin, Esq., Willkie Farr & Gallagher LLP (Apr. 9, 2007) (Class Relief for Fixed Income Exchange-Traded Funds); Letter from Catherine McGuire, Esq., Chief Counsel, Div. of Mkt. Regulation, to the Derivative Prods. Comm., Secs. Indus. Ass’n (Nov. 21, 2005) (Request for Exemptive Relief Regarding Exchange-Traded Funds); Letter from James A. Brigagliano, Esq., Assistant Dir., Div. of Mkt. Regulation, to Ira Hammerman, Senior Vice President & Gen. Counsel, Secs. Indus. Ass’n (Jan. 3, 2005) (No-Action Relief From Rule 200(g) of Regulation SHO); Letter from James A. Brigagliano, Esq., Assistant Dir., Div. of Mkt. Regulation, to Claire P. McGrath, Esq., Vice President & Spec. Counsel, Am. Stock Exch. (Aug. 17, 2001) (Exemptive Relief for Exchange Traded Index Funds); supra note 7 (Equity ETF Class Relief Letter). The Applicants represent in the Letter that, in the rare event the Fund does not operate as an ETF of ETFs for that day, the Fund will operate to meet the conditions of the ETF Class Relief, including the Equity ETF Class Relief Letter. Applicants do not believe that either option will have an effect on the efficacy of the arbitrage process for the Fund.

- A close alignment between the market price of the Fund’s Shares and the Fund’s NAV is expected.

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 Applicants may not rely upon that exception for the Shares.⁸ 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 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund 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

⁸ 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 Fund and its securities do not meet those definitions.

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 Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, 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 Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.⁹

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 continuously redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, 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 Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

⁹ Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund 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.

Rule 10b-17(b)(1)(b)(A) and (B)

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 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.¹⁰

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 Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund 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 Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

¹⁰ 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 Fund. This is because it is not possible for the Fund 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 Applicants 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.

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 Fund.

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 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 Fund 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(6) and (9).