

February 28, 2020

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U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for Exemptive Relief under Rule 200(c) of Regulation SHO with respect to Securities Positions in an AP's Confidential Account resulting from Purchases of Deposit Securities for Creations and Delivery of Redemption Securities from Redemptions in ActiveSharesSMETFs and Future Funds¹

Dear Ms. Tao:

We are writing on behalf of Precidian ETF Trust II (the "Trust"). The Trust is a Delaware statutory trust registered as an open-end management investment company under the 1940 Act. The Trust requests exemptive relief under Rule 200(c) of Regulation SHO ("Regulation SHO") under the Securities Exchange Act of 1934, as amended (the "Exchange Act") on behalf of itself, its series, the Royce Pennsylvania ETF, Royce Premier ETF, Royce Total Return ETF, ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge Mid Cap Growth ETF, ClearBridge Select ETF, the ClearBridge Small Cap Value ETF and ClearBridge All Cap Value ETF (the "ActiveSharesSMETFs"), any future open-end investment company that is an actively managed ETF (including other series funds issued by the Trust or other issuers) operating under the same representations and adhering to the same conditions as set forth in this letter and in the ActiveSharesSM Order ("Future Funds"), the authorized participants ("APs") for such ActiveSharesSMETFs and Future Funds, and the registered broker-dealers engaged by APs to act as brokers for the APs (the "AP Representatives").² The requested relief would

¹ On May 20, 2019, the Securities and Exchange Commission (the "SEC") issued a combined exemptive order (the "ActiveSharesSM Order") to Precidian Funds LLC, the Precidian ETF Trust and the Precidian ETF Trust II, under the Investment Company Act of 1940, as amended ("1940 Act"), which provides for operation of exchange-traded funds that do not provide daily portfolio holdings disclosure. ActiveSharesSMETFs are required to operate in compliance with the provisions in the application that is part of the ActiveSharesSM Order.

² In order for a broker-dealer to be authorized to act as an AP for an ActiveSharesSMETF, the broker-dealer must enter into two separate agreements: one with the ActiveSharesSMETF distributor and one with an AP Representative. The AP is responsible for selecting its own AP Representatives and may engage one or more AP Representatives to act as its agent for each ActiveSharesSMETF, subject to approval of each AP Representative by the particular ActiveSharesSMETF. The

permit an AP Representative, in determining an AP's net position in a security for order marking purposes, to calculate the net position separately for the following positions in the AP's Confidential Account, as defined below: (a) the securities positions resulting from the purchase of Deposit Securities, as defined below, in connection with a creation order, and the sale of Redemption Securities, as defined below, in connection with a redemption order, made by such AP Representative on behalf of such AP through a brokerage account with such AP Representative (the "AP's Confidential Account"),³ and (b) the securities positions delivered by an ActiveSharesSMETF in consideration of such AP's creation or redemption activity. AP Representatives must be approved by an ActiveSharesSMETF, and an AP may engage more than one AP Representative per ActiveSharesSMETF. The purpose of allowing an AP to engage more than one AP Representative is to encourage achievement of best execution through competitive forces. An AP would have only one Confidential Account at any AP Representative, which Confidential Account would be used by the AP for creation orders and redemption orders across multiple ActiveSharesSMETFs for which the AP serves as authorized participant.⁴ An AP would not be allowed to split execution of a creation order or redemption order across multiple AP Representatives. An AP Representative would be allowed to be engaged by more than one AP although it would maintain a separate AP Confidential Account for each AP.

The relief requested in this Letter is needed because the unique non-transparent structure of the ActiveSharesSMETFs prohibits an AP Representative from disclosing to the AP the identities of the securities purchased and sold for the AP through the AP's Confidential Account.

Operation of ActiveSharesSMETFs under the ActiveSharesSM Order

The ActiveSharesSM Order provides for issuance of shares by ActiveSharesSMETFs, in creation unit size, through APs that are broker-dealers. Precidian expects that the ActiveSharesSMETFs will require APs to effect creation and redemption orders primarily on an in-kind basis, except in cases when the investment manager for the ActiveSharesSMETFs (the "Investment Manager") determines that it is in the best interest of the ActiveSharesSMETFs to require creation and redemption orders to be effected on

ActiveSharesSMETF must either be a party to the AP Representative Agreement between the AP and the AP Representative or separately contract with the AP Representative. Although an AP Representative would act as agent for the AP, in order to be approved by an ActiveSharesSMETF, the AP Representative would be required to undertake to the ActiveSharesSMETF, among other things, that it would maintain all portfolio-related information provided to the AP Representative by the ActiveSharesSMETF in strict confidence and not disclose such information to the AP.

³ As noted below, the AP's Confidential Account would be used for the narrow purpose of effecting creation and redemption transactions with one or more ActiveSharesSMETFs. As noted in the ActiveSharesSM Order, each ActiveSharesSMETF would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the ActiveSharesSMETF.

⁴ The AP Representative would net all of AP's securities positions held in an AP's Confidential Account for order marking purposes.

a partial in-kind or all-cash basis.⁵ The Investment Manager may require orders to be effected on a partial in-kind basis when: (i) the AP Representative notifies the Investment Manager that an AP is restricted from transacting in a particular portfolio security (*e.g.*, **because the stock is issued by the AP or a parent company of the AP**), in which case, cash will be delivered in lieu of the security in connection with a creation order and the AP, through the AP's Confidential Account, will receive cash in lieu of the security in connection with a redemption order;⁶ (ii) trading in a particular security is disrupted; (iii) purchases or sales of a particular security are restricted as a result of a governmental or judicial order, a law, regulation or regulatory authority or action by an exchange or other self-regulatory organization; (iv) the ActiveSharesSMETF receives sizeable redemption orders and the Investment Manager determines that sales of the portfolio securities could adversely impact the market for such securities; or (v) when the Investment Manager determines it would be in the best interest of the ActiveSharesSMETF. The Investment Manager may require creation and redemption orders to be effected on an all-cash basis when: (i) equity markets are generally disrupted, (ii) trading in a large number of the portfolio securities is restricted as a result of a governmental or judicial order, a law, regulation or regulatory authority or action by an exchange or other self-regulatory organization, or (iii) the Investment Manager determines that it would be in the best interest of the ActiveSharesSMETF. Although we cannot predict how frequently such situations might occur, our expectation would be that the Investment Manager would infrequently require APs to effect creation and redemption orders on a partial in-kind basis or require APs to effect creation and redemption orders on an all-cash basis.

In operating creations and redemptions and varying from the predominant in-kind form, ActiveSharesSMETFs would act in the same way as U.S. exchange-traded funds ("ETFs"), registered under the 1940 Act and investing primarily in exchange-traded securities, do today. The Investment Manager would notify the distributor or the transfer agent, as applicable, for the ActiveSharesSMETF (the "Distributor"), who maintains the order entry system, when creation orders and/or redemption orders will be required to be carried out on a partial in-kind or all-cash basis, and the Distributor or agent would then enter such information into the ETF order entry system. This process is the same notification process used by ETFs today.

As required under the ActiveSharesSM Order and to facilitate in-kind creations and redemptions (or partial in-kind creations and redemptions) but without requiring an ActiveSharesSMETF issuer to disclose publicly (including to an AP) on a daily basis the identities and quantities of the portfolio

⁵ Creation and redemption orders may be effected on an all-cash basis or a partial cash/partial in-kind basis, consistent with the ActiveSharesSM Order. References to creation and redemption orders in this request for exemptive relief would cover partial in-kind orders as well as full in-kind orders.

⁶ An AP may provide an AP Representative or the custodian for the ActiveSharesSMETF, if engaged as screening agent, on a confidential basis, with a list of securities that the AP will direct the AP Representative not to purchase through the AP's Confidential Account in connection with a creation order and not to receive into the AP's Confidential Account from the ActiveSharesSMETF in connection with a redemption order (the "AP Restricted List"). The AP Representative will request that the ActiveSharesSMETF treat such securities as "cash in lieu" instruments for purposes of creation orders and redemption orders in accordance with the terms of the ActiveSharesSM Order.

securities to be delivered to an ActiveSharesSMETF in connection with creations and the portfolio securities to be delivered by the ActiveSharesSMETF to the AP in connection with redemptions, an AP would be required to engage one or more broker-dealers to act as its AP Representative and to carry an AP's Confidential Account for such AP to handle all creation orders and redemption orders for such AP with respect to the ActiveSharesSMETFs for which the AP acts as an authorized participant. The AP would have full discretion to select as AP Representative any broker-dealer it wishes to select. However, prior to engagement of the broker-dealer by the AP, the ActiveSharesSMETF would be required to approve the AP Representative selected by the AP. The ActiveSharesSMETF would reserve the right to withhold consent or later withdraw approval for any broker-dealer.⁷ As a general matter, an ActiveSharesSMETF would be expected to approve multiple reputable broker-dealers selected by an AP to act as its AP Representatives provided that the broker-dealers could demonstrate that they would be able to process creations and redemptions operationally through AP's Confidential Account, they undertake to maintain all portfolio information provided to them by ActiveSharesSMETFs in connection with creations and redemptions in strict confidence and they maintain all required licenses, policies and procedures and creditworthiness necessary and appropriate to carry out the functions of the AP Representative.

Each AP Representative would be a registered broker-dealer and would not be affiliated with an AP for which it serves as AP Representative. The AP Representative would be authorized to execute transactions in Deposit Securities and Redemption Securities for an AP through exchanges, third-party market makers and alternative trading systems, in the over-the-counter market generally and through other means, so long as the executions were effected in accordance with the AP's standing instructions. The AP Representative would not be authorized to assign responsibility for execution to a third-party executing broker-dealer.

The relationship between an AP and the AP Representative would be documented by a written agreement (the "AP Representative Agreement") under which the AP Representative would agree to act as agent for the AP to purchase Deposit Securities for such AP in connection with its creation orders for ActiveSharesSMETFs and to sell Redemption Securities for the AP in connection with redemption orders for ActiveSharesSMETFs, in both cases, through the AP's Confidential Account. In the AP Representative Agreement, the AP Representative would also agree to purchase Deposit Securities and sell Redemption Securities for an AP in accordance with standing instructions provided by the AP.⁸ An AP Representative would provide in the AP Representative Agreement that it would be prohibited from disclosing to the AP the identity of the Deposit Securities purchased for the AP or the Redemption Securities sold for the AP (or the identity of any Deposit Security or Redemption Security for which

⁷ In the event that an AP had only one AP Representative and the AP's AP Representative were to resign, an AP would not be able to create or redeem until a replacement AP Representative had been appointed by the AP and approved by the ActiveSharesSMETF.

⁸ The AP's Confidential Account would only be available for use by an AP in connection with creations and redemptions of ActiveSharesSMETFs, and no other types of transactions would be permitted in the AP's Confidential Account.

cash was substituted as part of a partial in-kind creation or redemption order), and the AP would acknowledge those terms.

Each ActiveSharesSMETF would also contract with the AP Representatives selected by its APs, either directly or by joining as a party to the AP Representative Agreement. This agreement would include undertakings by the AP Representative to the ActiveSharesSMETF to follow the creation and redemption procedures provided by the ActiveSharesSMETF and to maintain in strict confidence disclosures by the ActiveSharesSMETF to the AP Representative of the Deposit Securities and Redemption Securities.

Prior to the opening of trading on the applicable listing exchange on each day on which the national securities exchange on which shares of the ActiveSharesSMETFs are primarily listed is open for trading (a “Business Day”), the AP Representative would receive from the ActiveSharesSMETF’s custodian a confidential list of the basket of securities and cash that an AP would be required to deliver to the ActiveSharesSMETF, through the AP’s Confidential Account, in connection with an in-kind or partial in-kind creation order submitted on that day (the “Deposit Securities”) by the AP, and a confidential list of the basket of securities that an AP would receive, through the AP’s Confidential Account, in connection with an in-kind or partial in-kind redemption order submitted that day (the “Redemption Securities”). On any given Business Day, the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Redemption Securities would correspond pro rata to the positions owned by each such ActiveSharesSMETF in its investment portfolio (including cash positions). As a result, we expect that the identity of the Deposit Securities and the Redemption Securities would be the same on a given Business Day. An AP Representative would be required to maintain such lists in strict confidence and not to disclose them to their affiliates or within their firm, other than to persons who need to know the information in connection with the firm’s role as AP Representative (or as required by applicable law).⁹ Without limitation, an AP Representative would be prohibited from disclosing such lists to any third party, including, without limitation, to any beneficial owner of an AP’s Confidential Account, other than the firm’s clearing broker in connection with clearing and settling transactions through DTC. The same process would apply to partial in-kind creations and redemptions, and the ActiveSharesSMETF would notify the AP Representative of the amount of cash that would be deliverable in lieu of the specified Deposit Securities or Redemption Securities in the case of a partial in-kind creation or redemption. The operational process for communicating the required content of the creation and redemption baskets would be identical to that followed by ETFs today, except that the notice regarding the identity of the Deposit Securities and the Redemption Securities, as well as the identity of any securities for which cash would be substituted for the security, would be provided only to the AP Representative and not to the AP, and the lists would be subject to strict confidentiality requirements.

⁹ The AP Representative would, for example, be authorized to disclose the names if required by regulatory authority or pursuant to a valid subpoena or other court order.

APs would be on-boarded as confidential account owners by an AP Representative in the same manner as the AP Representative would on-board other brokerage and custody customers. In addition to the customary on-boarding process, an AP and its AP Representative would enter the AP Representative Agreement (discussed above).

Creation and redemption orders would be submitted by APs to the Distributor prior to 4:00 p.m. (Eastern Time) on a Business Day.¹⁰ The AP would know the cost of a creation order based on the publication prior to the opening of such Business Day, on the ActiveSharesSMETF's website, of the estimated amount of cash required by an AP to purchase the Deposit Securities underlying a single creation unit of the ActiveSharesSMETF (the "Cash Creation Amount"), as well as the additional cash amount needed to cover transaction fees, fractional shares and other specified costs payable to the ActiveSharesSMETF (the "Balancing Amount").¹¹ The AP would know the value of the Redemption Securities to be received through the redemption order because it would be entitled to receive Redemption Securities equal to the NAV of a creation unit, as published at 4:00 p.m. (Eastern Time) on such Business Day.

The mechanics and timing of creations and redemptions of an ActiveSharesSMETF would be the same as those in effect for creations and redemptions of ETF shares today. The only differences between the creation and redemption process to be used by ActiveSharesSMETFs is that the APs will not know the identities of the Deposit Securities or of the Redemption Securities, and the AP Representative would purchase the Deposit Securities for an AP and sell Redemption Securities for an AP through the AP's Confidential Account rather than the AP purchasing the Deposit Securities and selling the Redemption Securities through the AP's own trading desk.

In regard to creation orders for ActiveSharesSMETFs, an AP would submit a creation order to the Distributor in accordance with instructions specified in the authorized participant agreement between the AP and the Distributor (or transfer agent), on behalf of the Trust (the "AP Agreement"). Assuming that the creation order were accepted by the Distributor (or transfer agent), it would notify the ActiveSharesSMETF, the applicable AP Representative and the AP of such acceptance, and the AP would be required to provide standing instructions to the AP Representative to purchase the Deposit Securities for such ActiveSharesSMETF, on behalf of the AP, through the AP's Confidential Account at such AP Representative. In order to settle the creation order, the AP would be required to transfer cash, equal to the Cash Creation Amount and the Balancing Amount, to the AP's Confidential Account at the designated AP Representative on or before the settlement date for purchase of the Deposit Securities (currently, T+2) in the Continuous Net Settlement ("CNS") system of National Securities Clearing

¹⁰ All creation and redemption orders would be made by an AP for its own account, as principal.

¹¹ The Creation Cash Amount is based on the prices of the Deposit Securities on the Business Day preceding the date on which the creation order is submitted and includes an additional cash amount referred to as the Balancing Amount.

Corporation (“NSCC”).¹² The designated AP Representative would purchase the Deposit Securities for such AP, through the AP’s Confidential Account at such AP Representative, on the date on which the creation order was accepted by the Distributor (or transfer agent). The AP Representative would then deliver the Deposit Securities, on behalf of the AP, to the ActiveSharesSMETF on the settlement date for the creation order in CNS, which is the standard U.S. market settlement date for equity securities (currently, T+2). The ActiveSharesSM ETF would deliver creation units to the designated AP Representative, for delivery to the AP, in exchange for the Deposit Securities. If additional cash were needed to settle (i) the purchase of the Deposit Securities or (ii) the creation order, the AP would be required to pay such additional cash amount to the AP Representative on or before the settlement date for the creation order (currently, T+2), as provided in the AP Representative Agreement.¹³ If, on the other hand, the Cash Creation Amount posted by an AP to the AP’s Confidential Account at the designated AP Representative were greater than the cash needed by the AP Representative to purchase the Deposit Securities and settle the creation order, the AP Representative would be obligated to return the overage amount to the AP, in accordance with the terms of the AP Representative Agreement.

In the case of a redemption order for ActiveSharesSMETFs, an AP would submit a redemption order to the Distributor in the manner provided in the AP Agreement. After the redemption order were accepted by the Distributor, the Distributor would notify the ActiveSharesSMETF, the applicable AP Representative and the AP of such acceptance, and the AP would be required to provide standing instructions to the designated AP Representative to sell the Redemption Securities to be received by the AP in the AP’s Confidential Account from the ActiveSharesSMETF in settlement of the redemption order. In order to settle the redemption order, the AP would deliver the shares comprising the creation unit to the AP’s Confidential Account at the designated AP Representative together with the Balancing Amount prior to the settlement date for the redemption order, which is the standard U.S. market settlement date for equity securities (currently, T+2). The AP Representative would sell the Redemption Securities on behalf of the AP through the AP’s Confidential Account on the date on which the redemption order was submitted and accepted by the Distributor.¹⁴ The sale of the Redemption Securities would settle on the standard U.S. market settlement date for equity securities (currently, T+2), and the AP Representative would settle the redemption order by delivering the proceeds of such sale to the AP and the creation unit to the ActiveSharesSMETF. The sale of the Redemption Securities and the delivery of the creation unit

¹² As with other ETFs, creations and redemptions for ActiveSharesSMETFs will settle in NSCC’s CNS system or otherwise through the Depository Trust Company (“DTC”) on the standard U.S. market settlement date for equity securities (currently, T+2).

¹³ Such shortfall would be determinable by the AP Representative on the date on which the creation order was accepted because the AP Representative would purchase the Deposit Securities on such date and verify the cash amount needed for the creation order with the ActiveSharesSMETF on such date.

¹⁴ Both redemption and creation orders expire if not accepted by the Distributor on the day they are submitted. Redemption and creation orders may be tendered and accepted only on a Business Day on which the New York Stock Exchange is open for business and must be submitted and accepted on or before 4:00 p.m. (New York time) on such day.

by the AP to the ActiveSharesSMETF would settle through the accounts of the AP Representative (or its clearing broker) and the ActiveSharesSMETF at NSCC's CNS system or otherwise through DTC. The AP Representative would deliver the Balancing Amount to the ActiveSharesSMETF, on behalf of the AP, on or before the settlement date of the redemption order, which is the standard U.S. market settlement date for equity securities (currently, T+2).

We anticipate that the creation and redemption process for ActiveSharesSMETFs will facilitate arbitrage by APs, as it does for ETFs with a similar basket of underlying securities. This arbitrage is expected to allow the ActiveSharesSMETF shares to trade at or about their NAV. Although APs would not know the composition of an ActiveSharesSMETF's portfolio, we anticipate that they would have sufficient information about the portfolio characteristics to be able to arbitrage pricing differences by submitting a creation order when the ActiveSharesSMETF's shares are trading at a premium to NAV and submitting a redemption order when the ActiveSharesSMETF's shares are trading at a discount to NAV. The only difference between the process used today by APs to arbitrage pricing differences between the secondary and primary market prices for ETFs using creation and redemption orders and that projected to be used by APs for ActiveSharesSMETFs is that, in the case of arbitrage involving ActiveSharesSMETFs, APs would not know the identity of the Deposit Securities and the Redemption Securities and would rely on their AP Representative to purchase and sell the Deposit Securities and the Redemption Securities.¹⁵

Creation and redemption activity for ActiveSharesSMETFs would be carried out exclusively through the AP's Confidential Account. The only securities that are expected to sit in an AP's Confidential Account on an overnight basis are shares of the applicable ActiveSharesSMETF that are delivered by an AP to the ActiveSharesSMETF in connection with a redemption order, and that are delivered to the AP's Confidential Account by the ActiveSharesSMETF in the case of a creation order. Purchases of Deposit Securities and sales of Redemption Securities for an AP would be carried out by an AP Representative on behalf of the AP on the trade date for a creation order or redemption order, respectively, and the AP's Confidential Account would have a receivable position with respect to those securities until the settlement date for the creation order or redemption order. The purchases of Deposit Securities and sales of Redemption Securities would be settled on the standard U.S. market settlement date for equity securities transactions, currently, T+2 (or an earlier time period, if agreed by the AP Representative with the ActiveSharesSMETF and its market counterparties), on a delivery versus payment/receipt versus payment basis ("DVP/RVP").

¹⁵ Information about the portfolio holdings of an ActiveSharesSMETFs will be available to APs on a time-lagged basis. Each ActiveSharesSMETF is required to disclose its portfolio holdings to the public on a quarterly basis and to publish an indicative value continuously, each second, throughout the Business Day, based on the holdings that will form the basis for the calculation of NAV of such ActiveSharesSMETF at the end of the day.

Requirements under Rule 200

Rule 200(c) provides that a “person shall be deemed to own securities only to the extent that he has a net long position in such securities.” Rule 200(f) requires that, in determining its net position in a security, a broker-dealer must aggregate all of its positions in that security across all accounts, unless it qualifies for independent trading unit aggregation. Rule 200(g) requires that a broker-dealer mark all sell orders of any equity security “long,” “short,” or “short exempt.” A sell order may only be marked “long” if the seller is “deemed to own” the security being sold pursuant to Rule 200(a) through (f) and either: (i) the security to be delivered is in the physical possession or control of the broker-dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than the settlement of the transaction.

Practical Difficulties with Compliance with Position Netting

Because of the non-transparent structure of the ActiveSharesSMETFs, an AP would not know the identities of the underlying Deposit Securities and Redemption Securities beneficially owned by such AP and held in the AP’s Confidential Account. As a result, an AP would not be able to accurately determine its net position in those securities based solely on holdings held outside of the AP’s Confidential Account. Similarly, an AP Representative would not be able to accurately determine the AP’s net position in those securities based solely on the holdings in the AP’s Confidential Account (as the AP Representative would not have information related to the AP’s holdings held outside of the AP’s Confidential Account carried by that particular AP Representative). It would be impracticable and cost prohibitive for an AP and an AP Representative to establish the infrastructure necessary to permit aggregation of securities positions held within the AP’s Confidential Account at a designated AP Representative with the securities positions held by the AP outside of the AP’s Confidential Account, while maintaining the confidentiality of the AP’s Confidential Account’s holdings. The AP’s Confidential Account would therefore be used for the narrow purpose of effecting purchases of Deposit Securities and sales of Redemption Securities to facilitate in-kind creation and redemption transactions with ActiveSharesSMETFs without disclosing the identity of the Deposit Securities and the Redemption Securities to the AP.

In support of its request for exemptive relief, the Trust makes the following additional representations:

- Each AP Agreement would provide that once a creation order or redemption order were accepted by the Distributor (or transfer agent) for an ActiveSharesSMETF, such creation order or redemption order would be unconditional and irrevocable by the AP, the AP Representative, and the Distributor (or transfer agent).¹⁶

¹⁶ Aside from the requested exemptive relief described herein, both the AP and the AP Representative (in a principal or agency capacity) would remain subject to the requirements of Rule 200, Rule 201, Rule 203, and Rule 204 of Regulation SHO, as applicable. Further, the creation or redemption order would not be considered an unconditional contract for

- The AP Representative would establish, maintain, and enforce written policies and procedures, including information barriers, reasonably designed to maintain in strict confidence the identity of the Deposit Securities and the Redemption Securities.
- Representatives of the AP Representative effecting transactions in an AP's Confidential Account would not be authorized to share information regarding the identity of the Deposit Securities and the Redemption Securities or the AP Restricted List,¹⁷ with other personnel of the AP Representative or its affiliates, other than on a need-to-know basis, or with any third party (except on a confidential basis with its clearing broker and as required by applicable law or requested by a regulatory authority).¹⁸ AP Representative personnel would be required to sign annual certifications attesting to the fact: (1) that they are in compliance with the confidentiality requirements set forth in their agreement with the Trust¹⁹ and firm policies and procedures connected with the business, and (2) that they will not use the identity or weighting of the securities in the creation basket or redemption basket for any purpose other than executing creations and redemptions for an ActiveSharesSMETF on behalf of an AP. The Compliance Department of the AP Representative would monitor personnel for compliance, and the Internal Audit group of the AP Representative would conduct periodic audits of the AP Representative to ensure compliance with the policies and procedures noted herein, the annual certifications, and applicable law.
- Each AP seeking to rely on the requested relief would, at all relevant times, be a party to and comply with: (i) an enforceable, written AP Agreement, among other things, authorizing the AP to create and redeem shares of the ActiveSharesSMETF(s) associated

purposes of marking “long” or “short” under Regulation SHO. Following the submission of a redemption order to the Distributor, the AP Representative would not increment the net position of the AP's Confidential Account in the underlying securities unless and until the Distributor had confirmed in writing to the AP Representative that the redemption order submitted by the AP would be filled with the Redemption Securities. For any underlying securities that are replaced with cash or other substituted securities (and not with Redemption Securities), the AP Representative would not increment the net position of the AP's Confidential Account in such underlying securities. Moreover, following the submission of a creation order to the Distributor, the AP Representative would not increment the net position of the AP's Confidential Account in the ActiveSharesSMETF unless and until the Distributor had confirmed in writing to the AP Representative that the creation order submitted by the AP would occur.

¹⁷ If the custodian for the ActiveSharesSMETF rather than the AP Representative is responsible for screening the AP Restricted List against the portfolio basket, it would be subject to an obligation to maintain such information in strict confidence.

¹⁸ For example, an AP Representative would be allowed to provide the information if required by a regulatory authority or pursuant to a valid subpoena or other court order.

¹⁹ As noted in the ActiveSharesSM Order discussion related to AP Representatives.

with the AP's Confidential Account at an AP Representative, and (ii) an enforceable written AP Representative Agreement with each AP Representative selected by the AP and approved by the particular ActiveSharesSMETF(s), among other things, appointing each such AP Representative as agent of the AP to purchase Deposit Securities and sell Redemption Securities for the AP through the AP's Confidential Account in connection with creations and redemptions for the ActiveSharesSMETFs for which the AP acts as an authorized participant and designates such AP Representative to act as its AP Representative, subject, in both cases, to approval by the applicable ActiveSharesSMETF of the AP Representative and the representations, acknowledgments and conditions as described herein.

- An AP would be required to execute creation and redemption orders for an ActiveSharesSMETF through the AP's Confidential Account at an AP Representative designated by the AP to execute the particular creation order or redemption order.
- The creation orders and redemption orders submitted by an AP would be settled through the AP Representative's (or its clearing broker's) account at NSCC or DTC.
- The AP Representative would establish, maintain, and enforce written policies and procedures reasonably designed to ensure, in connection with each creation order effected through the AP's Confidential Account, that: (i) the Balancing Amount and the Cash Creation Amount would be delivered to the AP's Confidential Account, on or prior to the settlement date for the purchase of the Deposit Securities, which is the standard U.S. market settlement date for equity securities (currently, T+2); and (ii) Deposit Securities would be purchased for the AP by the AP Representative on the date on which the creation order was accepted by the Distributor, in accordance with the AP's standing instructions, and would be delivered to the applicable ActiveSharesSMETF issuing the creation unit, together with the Balancing Amount, on or prior to the settlement date for such creation order, which is the standard U.S. market settlement date for equity securities (currently, T+2), through the AP's Confidential Account at such AP Representative, in exchange for the creation unit purchased by the AP.
- The AP Representative would establish, maintain, and enforce written policies and procedures reasonably designed to ensure, in connection with each redemption order effected through the AP's Confidential Account, that: (i) the creation unit tendered for redemption by the AP, together with the Balancing Amount, would be delivered to the AP's Confidential Account at such AP Representative, on or prior to the settlement date for the redemption order, which is the standard U.S. market settlement date for equity securities (currently, T+2), for delivery to such ActiveSharesSMETF; (ii) the creation unit, together with the Balancing Amount, would be tendered to the ActiveSharesSMETF on or before the settlement date for the redemption order, in exchange for the Redemption Securities; and (iii) the Redemption Securities would be sold for the AP by the AP

Representative on the date on which the redemption order was accepted by the Distributor, in accordance with the AP's standing instructions. The sale of the Redemption Securities would settle in the CNS system of NSCC or DTC on the settlement date for the redemption order, which is the standard U.S. market settlement date for equity securities (currently, T+2), and the proceeds of such sale would be distributed to the AP in exchange for the creation unit tendered for redemption by the AP.

Proposed Conditions for Relief

In order for the unique non-transparent structure of the ActiveSharesSMETFs to operate in a manner to ensure that confidential information is protected, we seek exemptive relief from Rule 200(c) for the ActiveSharesSMETFs and Future Funds to permit an AP Representative, in determining an AP's net position in a security for order marking purposes, to calculate the net position separately for the following positions in the AP's Confidential Account: (a) the securities positions resulting from the purchase of Deposit Securities in connection with a creation order, and the sale of Redemption Securities in connection with a redemption order, made by such AP Representative on behalf of such AP, and (b) the securities positions delivered by an ActiveSharesSMETF in consideration of such AP's creation and redemption activity, subject to the representations and conditions provided herein. As a result, this would mean that the AP, in determining its net position in a security for order marking purposes, would not consider the securities positions held in the AP's Confidential Account as described in the immediately preceding sentence. Any exemptive relief, if granted, will be subject to the following conditions:

- The AP Representative would segregate the assets held in an AP's Confidential Account carried by the AP Representative from the proprietary assets of the AP Representative and from the assets of other customers of the AP Representative.
- The AP Representative would maintain records with respect to the AP's Confidential Account in accordance with applicable law. Prior to selling Redemption Securities for an AP through the AP's Confidential Account, the AP Representative would confirm with the Distributor (or transfer agent): (i) that the AP's redemption order was duly accepted; (ii) the settlement date for the redemption order, which is the standard U.S. market settlement date for equity securities (currently, T+2); and (iii) that the ActiveSharesSMETF to which the redemption order relates had not suspended redemptions.
- The AP Representative (or its clearing broker) would close out fail-to-deliver positions resulting from the sale of Redemption Securities in accordance with Regulation SHO.
- The APs and the AP Representatives would maintain accurate books and records evidencing compliance with the representations and conditions contained in this letter and would provide such books and records to the staff of the SEC and to other regulators, including self-regulatory organizations, upon request.

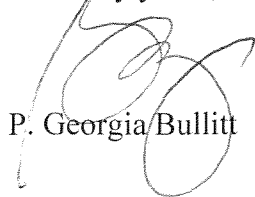
Aside from the requested exemptive relief described herein, both APs and AP Representatives would remain subject to the requirements of Regulation SHO, as applicable.

Conclusion

We respectfully submit that, subject to the conditions provided above, the requested exemptive relief is consistent with the goals and requirements of Regulation SHO to maintain market integrity by preventing naked short sales and facilitating settlement and avoidance of fails. Accordingly, based on the foregoing, we respectfully request that the SEC and the Division of Trading and Markets grant the relief requested, subject to the representations and conditions above, to grant exemptive relief to the ActiveSharesSMETFs operating under the ActiveSharesSM Order and Future Funds as well as APs and AP Representatives to permit an AP Representative, in determining an AP's net position in a security for order marking purposes, to calculate the net position separately for the following positions in the AP's Confidential Account: (a) the securities positions resulting from the purchase of Deposit Securities in connection with a creation order, and the sale of Redemption Securities in connection with a redemption order, made by such AP Representative on behalf of such AP, and (b) the securities positions delivered by an ActiveSharesSMETF in consideration of such AP's creation and redemption activity, and to permit an AP, in determining its net position in a security for order marking purposes, to not consider securities positions held in the AP's Confidential Account(s), subject to the representations and conditions as provided herein above.

If you have any questions or wish to discuss this matter, please feel free to call the undersigned at (212) 728-8250.

Sincerely yours,



P. Georgia Bullitt

cc: Brett W. Redfearn

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