

# WILLKIE FARR & GALLAGHER LLP

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February 18, 2014

Ms. Michele M. Anderson  
Chief  
Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Request for Exemptive and No-Action Relief from Rule 14e-5 under the Securities Exchange Act of 1934 for the iShares Enhanced International Small-Cap ETF, iShares Enhanced International Large-Cap ETF

Dear Ms. Anderson:

iShares U.S. ETF Trust (the "Trust") requests relief under the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of themselves and the market participants discussed below with respect to two series of the Trust operated as exchange-traded funds ("ETFs" and each, an "ETF"). The Trust is an open-end management investment company, registered as an investment company under the Investment Company Act of 1940, as amended ("1940 Act") with the U.S. Securities and Exchange Commission (the "Commission"), that was organized on June 21, 2011 as a Delaware statutory trust. The Trust currently consists of 5 investment series or portfolios.

This letter requests relief for two newly-created series of the Trust, the iShares Enhanced International Small-Cap ETF (the "International Small-Cap ETF") and iShares Enhanced International Large-Cap ETF (the "International Large-Cap ETF"), (each of the preceding is referred to as a "Fund" and, collectively, the "Funds").<sup>1</sup> The Trust has filed with the Commission and is seeking effectiveness of registration statements on Form N-1A for the International Small-Cap ETF and International Large-Cap ETF. The Trust is seeking approval from the NYSE Arca, Inc. (the "Exchange") to have the Funds'

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<sup>1</sup> The Trust requests that any relief that the Division of Corporation Finance grants to the Funds pursuant to this letter also be granted to the iShares Enhanced U.S. Small-Cap ETF and iShares Enhanced U.S. Large-Cap ETF, and that such prospective relief supersede the relief that the Division of Corporation Finance previously provided to the iShares Enhanced U.S. Small-Cap ETF and iShares Enhanced U.S. Large-Cap ETF on April 16, 2013. See Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Benjamin Haskin, Esq. (Apr. 16, 2013).

shares (the “Shares”) listed on the Exchange, subject to notice of issuance, pursuant to Exchange Rule 8.600.<sup>2</sup>

Each Fund will, under normal circumstances, invest at least 80 percent of its net assets in equity securities according to a proprietary investment process to assemble an investment portfolio from a defined group of stocks (the “Component Securities”) that seeks to emphasize companies within the group that exhibit certain investment characteristics. The Trust will issue and redeem Shares generally in aggregations of at least 50,000 Shares (referred to as “Creation Units”).

The Trust, on behalf of themselves, the Funds, the Exchange and any other national securities exchange on or through which the Shares may subsequently trade (with each such market being a “Market”), and persons or entities engaging in transactions in Shares, as the case may be, requests that the Commission grant exemptive or no-action relief from Rule 14e-5 under the Exchange Act in connection with secondary market transactions in Shares and the creation or redemption of Creation Units of Shares, as discussed below.

On October 24, 2006, the Commission granted relief to the PowerShares Exchange-Traded Fund Trust with respect to the rules under the Exchange Act identified above (the “PowerShares Letter”).<sup>3</sup> ETFs listed and traded on an exchange may rely upon the relief granted in the PowerShares Letter without the submission of an Exchange Act exemptive/no-action request if such ETFs meet specified conditions, including that each of the ETFs be managed to track a particular index.<sup>4</sup> Although the Funds are expected to meet the applicable requirements to be listed on the Exchange, they will not be managed to track a particular index;<sup>5</sup> therefore, the Funds may not rely on the relief provided in the PowerShares Letter with respect to Rule 14e-5 under the Exchange Act.

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<sup>2</sup> Rule 8.600 sets out the standards for trading, by listing or pursuant to unlisted trading privileges, Managed Fund Shares on the Exchange. Under sub-paragraph (c)(1) of Rule 8.600, “Managed Fund Share” means a security that, among other things, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment or similar entity, that invests in a portfolio of securities selected by the Investment Company’s adviser consistent with the Investment Company’s investment objectives and policies.” The Investment Company must issue Managed Fund Shares in a specific aggregate number of individual shares in return for a deposit of securities and/or a cash amount. Managed Fund Shares must be redeemable directly or indirectly from the Investment Company in return for securities and/or cash, a minimum number of Managed Fund Shares must be outstanding at the commencement of trading on the Exchange, and the Managed Fund Shares’ net asset value per share must be calculated daily and available to all market participants at the same time. The Exchange will file a proposal with the SEC under Section 19(b) of the Exchange Act before listing and/or trading Managed Fund Shares.

<sup>3</sup> See Letter from James A. Brigagliano, Assistant Director of Market Regulation, to Stuart M. Strauss, Esq. (Oct. 24, 2006). Relief was granted for the Commission by the Division of Market Regulation (now the Division of Trading and Markets) pursuant to delegated authority.

<sup>4</sup> See PowerShares Letter at 3.

<sup>5</sup> Except for the index-tracking criterion, the Funds satisfy all other conditions of the PowerShares Letter.

The SEC staff (the “Staff”) has, however, previously issued relief substantially similar to that requested herein to actively-managed ETFs<sup>6</sup> that are listed and traded on a national securities exchange and satisfy specified conditions.<sup>7</sup> On July 11, 2013, the Staff granted relief with respect to Rule 14e-5 under the Exchange Act to actively-managed ETFs (and funds of ETFs) that would be listed on the Exchange (the “AdvisorShares Trust Letter”).<sup>8</sup> Similar to the funds in the AdvisorShares Trust Letter, a Fund’s portfolios will be fully transparent and permit arbitrage activity and will in all material respects operate in a similar manner as index-based ETFs other than being actively managed.<sup>9</sup> The relief requested by the Trust is substantially similar to the relief

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<sup>6</sup> See Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell (Jan. 8, 2014) (the “First Trust January 2014 Letter”); Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to W. John McGuire, Esq. (July 3, 2013) (the “State Street July 2013 Letter”); Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to W. John McGuire, Esq. (Nov. 13, 2012) (the “State Street November 2012 Letter”); Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (June 21, 2012) (the “First Trust June 2012 Letter”); Letter from Josephine J. Tao to Grail Advisors ETF Trust (May 6, 2009) (the “Grail Letter”); Letter from Josephine Tao to WisdomTree Trust (May 9, 2008) (the “WisdomTree Letter”); Letter from James A. Brigagliano to PowerShares Actively Managed Exchange-Traded Fund Trust (Apr. 4, 2008). In the WisdomTree Letter, the Staff stated that it has repeatedly expressed its views on Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 with respect to ETFs that are not tied to an index and that could not satisfy all of the conditions of the class relief relating to such provisions (see footnote 6 below). The Staff stated that it therefore would not respond to requests for relief from those provisions relating to ETFs that are not managed to track a particular index unless they present novel or unusual issues. Because the Trust does not believe that the creation, redemption, listing or trading of Shares should present any novel or unusual issues, the Trust does not request relief from Section 11(d)(1) or Rules 10b-10, 11d1-2, 15c1-5 or 15c1-6.

<sup>7</sup> The Commission has granted class relief with respect to Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder to certain “Qualifying ETFs.” See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to the Securities Industry Association (Nov. 21, 2005). The Fund meets the requirements of “Qualifying ETFs” under the aforementioned letter and is relying on the letter with respect to these provisions. Moreover, the Trust notes that the Commission has issued an order granting a limited exemption from Rule 10b-17 under the Exchange Act to any issuer of an actively managed ETF. See Exchange Act Release No. 67,215 (Jun. 19, 2012).

<sup>8</sup> See Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to W. John McGuire, Esq. (July 11, 2013).

<sup>9</sup> In the same manner as the funds in the AdvisorShares Letter, the Funds will disclose on their website the identities and quantities of the securities and assets, i.e., portfolio securities, held by the Funds that will form the basis for their calculation of the net asset value (“NAV”) at the end of the business day (a day the Exchange is open for business). In addition, the sum of the current value of the portfolio securities to be used in calculating the NAV at the end of the business day will be disseminated every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association (“CTA”) on a per Share basis. In addition to the purchase and redemption features of the Creation Units, which are described below, the Shares will also be listed and traded on the Exchange, providing investors in Shares with intraday liquidity and potential arbitrage opportunities. Potential arbitrage opportunities will be facilitated by the transparency of the Funds’ portfolios, the CTA data, and the liquidity/accessibility of the portfolio securities. See Letter from W. John McGuire, Esq. to Michele M. Anderson, Chief, Office of Mergers and Acquisitions at 4-5 (July 9, 2013).

granted in the AdvisorShares Trust Letter; therefore, the Trust does not believe that the relief requested raises any significant new regulatory issues.

I. The Parties

A. The Funds

The Funds are separate investment portfolios of the Trust. The investment objective of each Fund is to provide long-term capital appreciation from investments made based on certain proprietary models of the Trust; the Funds do not seek to replicate the performance of specified indexes. Each Fund's investment objective is not a fundamental policy and can be changed by the board of trustees of the Trust (the "Board") without shareholder approval.

Each of the Funds seeks to achieve its investment objective by investing, under normal circumstances, at least 80 percent of its net assets in equity securities of certain types of issuers. The International Small-Cap ETF seeks to maintain strategic exposure to international small-capitalization stocks with targeted investment characteristics. The Fund utilizes proprietary investment processes intended to provide increased exposure to securities of companies based on certain quantitative investment characteristics, including, but not limited to earnings variability, leverage, price-to-book ratio and market capitalization. Companies in the universe of international small-capitalization securities include consumer discretionary, energy, financial and industrials companies.

The International Large-Cap ETF seeks to maintain strategic exposure to international large-capitalization stocks with targeted investment characteristics. The Fund utilizes proprietary investment processes intended to provide increased exposure to securities of companies based on certain quantitative investment characteristics, including, but not limited to earnings variability, leverage, price-to-book ratio and market capitalization. Companies in the universe of international large-capitalization securities include consumer discretionary, industrials and financial companies.

B. The Adviser

BlackRock Fund Advisors ("BFA" or the "Adviser") has overall responsibility for the general management and administration of the Funds, including investment of the Funds' assets. BFA is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). BFA provides an investment program for each of the Funds and manages the investment of the Funds' assets. In seeking to achieve each Fund's investment objective, BFA uses a team of portfolio managers, investment strategists and other investment specialists. BFA's management and administration of the Funds is subject to the oversight of the Boards. BFA uses proprietary models to try to achieve each Fund's investment objective.

Under the Investment Advisory Agreements between BFA and the Trust (entered into on behalf of the Funds), BFA is responsible for substantially all expenses of the Funds other than interest expense, taxes, brokerage expenses, future distribution fees or expenses and extraordinary expenses.

C. The Distributor

BlackRock Investments, LLC (the “Distributor”), a broker-dealer registered with the Commission under the Exchange Act, will act on an agency basis and will be the Funds’ “principal underwriter,” as defined in Section 2(a)(29) of the 1940 Act. The Trust issues and sells Shares only in Creation Units on a continuous basis through the Distributor at their NAV next determined after receipt of an order in proper form. The Distributor will not maintain a secondary market in the Shares. The Distributor may enter into selected dealer agreements with other broker-dealers or other qualified financial institutions for the sale of Creation Units of Shares (“Soliciting Dealers”). Such Soliciting Dealers may also be participants in the Depository Trust Company (“DTC”).

II. Creation and Redemption of Shares

A. Method of Purchase and Creation of Shares

The consideration for purchase of Creation Units of the Funds generally consists of the in-kind deposit of a designated portfolio of securities (including any portion of those securities for which cash may be substituted) (*i.e.*, the “Deposit Securities”), and the “Cash Component,” as described below. Together, the Deposit Securities and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of each Fund.

The Cash Component is an amount equal to the difference between the NAV of the Creation Unit and the “Deposit Amount,” which is an amount equal to the market value of the Deposit Securities. The function of the Cash Component is to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

BFA, through the National Securities Clearing Corporation (“NSCC”), makes available on each business day, before the opening of business on the Exchange, the identity and required number of shares of each Deposit Security. To be eligible to place orders with the Distributor and to create a Creation Unit of each Fund, an entity must be: (i) a “Participating Party,” *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC, (ii) a clearing agency that is registered with the Commission, or (iii) a DTC Participant, and must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Units (“Participant Agreement”). A Participating Party that has executed a Participant Agreement is referred to as an “Authorized Participant.”

All creation orders must be placed for one or more Creation Units by or through an Authorized Participant and must be received by the Distributor in proper form no later than the time specified in each Fund's prospectus on any business day in order for the purchase to be effected based on the NAV of the Shares as next determined on such date.

#### **B. Redemption of Shares in Creation Units**

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund. Orders to redeem Creation Units must be delivered by or through an Authorized Participant. A Fund will not normally redeem Shares in aggregations less than Creation Units. Beneficial owners must accumulate enough Shares in the secondary market to constitute a Creation Unit in order to be eligible to have such Shares redeemed by the Trust.

BFA and the Distributor make available through NSCC, immediately prior to the opening of business on the Exchange (normally 9:30 a.m., Eastern time) on each business day, the identity and number of Shares that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to purchases of Creation Units.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Creation Unit, as next determined after receipt of a request in proper form, and the value of the Fund Securities (such difference, the "Cash Redemption Amount"), less the redemption transaction fee or any additional fee described in the Fund's registration statement. If the Fund Securities have a value greater than the NAV of the Creation Unit, a compensating cash payment equal to such difference is required to be made by or through an Authorized Participant by the redeeming shareholder.

#### **III. Requests for Relief**

The Trust requests relief from Rule 14e-5 under the Exchange Act.<sup>10</sup> Rule 14e-5 prohibits a person who makes a cash tender offer or exchange offer for any equity security from directly or indirectly purchasing such security (or a security immediately convertible into or exchangeable for such security (a "related security")) otherwise than pursuant to such tender offer or exchange offer. Rule 14e-5 also applies to the dealer-manager of a tender or exchange offer for an equity security in which a Fund invests.

The Trust respectfully requests that the Commission or Staff grant an exemption from Rule 14e-5 to permit any person (including a member or member organization of the Exchange or other Market) acting as a dealer-manager of a tender or exchange offer

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<sup>10</sup> 17 CFR 240.14e-5 (2011).

for any security that is part of a group of securities that is received by a Fund when it issues a Creation Unit, i.e., Deposit Securities, or part of the group of securities that a Fund distributes when it redeems a Creation Unit, i.e., Fund Securities, during the existence of such offer, to: (1) redeem Shares in Creation Unit size aggregations to a Fund for Fund Securities that may include a security subject to the tender or exchange offer; and (2) engage in secondary market transactions in Shares during such offer.

The Trust believes that granting this request for relief is substantially similar to the relief provided in the AdvisorShares Trust Letter. The acquisition of individual Fund Securities by means of redemptions of Shares would be impractical and extremely inefficient in view of the requirement that a minimum number of Shares be redeemed. In no case would redemptions of Shares or secondary market transactions by dealer-managers be effected for the purpose of facilitating a tender offer. Accordingly, purchases and redemptions of Shares in the circumstances described would not appear to result in the abuses at which Rule 14e-5 is directed.

In addition, the Trust requests no-action relief in connection with purchases of Creation Units of a Fund's Shares by a broker-dealer (including a member or member organization of the Exchange or other Market) acting as dealer-manager of a tender offer for securities in which the Fund invests. The Trust acknowledges that Rule 14e-5(b)(5) provides an exception to the prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) the purchase or arrangement is made in the ordinary course of business and not to facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket (the "Basket Exception").

The dealer-managers will comply with the initial condition of the Basket Exception. As indicated by the Commission in the release adopting Rule 14e-5,<sup>11</sup> transactions in baskets in accordance with the Basket Exception provide little opportunity for a Covered Person to facilitate an offer<sup>12</sup> or for a security holder to exact a premium from the offeror. The purchase and redemption of ETF creation units typically involve baskets of securities, and broker-dealers acting as dealer-managers of tender offers for securities in which a Fund invests may be able to rely on the Basket Exception in purchasing Creation Units of a Fund's Shares. From time to time, however, a change in the composition of the portfolio securities of a Fund may result in a change in a basket that has been established for purposes of purchasing its Creation Units. As a consequence, a basket could contain less than 20 securities and/or covered securities and related securities could comprise more than 5% of the value of a basket. For example, a

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<sup>11</sup> See Exchange Act Release No. 42,055 (Oct. 22, 1999) (the "Rule 14e-5 Adopting Release").

<sup>12</sup> As discussed in the Rule 14e-5 Adopting Release, "facilitation of an offer" includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking.

liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in a basket to fall below 20 and/or could cause covered securities and related securities to comprise more than 5% of the value of a basket. Additionally, as a result of fluctuations in the market value of the securities held in a basket, covered securities and related securities could, at times, comprise more than 5% of the value of a basket. This would result in the unavailability of the Basket Exception for a broker-dealer acting as a dealer-manager for a tender offer for securities in which a Fund invests.

In addition, application of Rule 14e-5's prohibition would impede the valid and useful market and arbitrage activity that would assist secondary market trading and improve Share pricing efficiency. For example, an Authorized Participant may sell portions of Shares of Creation Units to investors and hold the remaining Shares in inventory, believing a market demand exists for the Shares. While holding the remaining Shares, the Authorized Participant may wish to short the portfolio securities of the Fund in order to hedge its exposure. When the Authorized Participant subsequently purchases portfolio securities to cover its short sales, it may operate outside of the prohibition of Rule 14e-5.

In order to address situations (including but not limited to the foregoing examples) where a basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of a basket, the Trust respectfully requests that the Staff take a no-action position under Rule 14e-5 if a broker-dealer (including a member or member organization of the Exchange or other Market) acting as a dealer-manager of a tender offer for any securities in which a Fund invests purchases such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Units of a Fund's Shares, if such purchases are in the ordinary course of business and are not effected for the purpose of facilitating such tender offer. Relief would be necessary in order to permit such broker-dealers to effect purchases of Creation Units of a Fund's Shares under such circumstances given that the Basket Exception would not be available. This extension of the Basket Exception is similar to the relief granted in the AdvisorShares Trust Letter and remains consistent with the rationale underlying the adoption of the Basket Exception. Similarly, we note, in particular, that purchases would be in the ordinary course of business and would not be effected for the purpose of facilitating a tender offer and therefore would not appear to result in the abuses at which Rule 14e-5 is directed. Further, we note that the Commission has also previously granted similar relief to actively managed ETFs<sup>13</sup> and index-based ETFs.<sup>14</sup>

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<sup>13</sup> See First Trust January 2014 Letter; State Street July 2013 Letter; State Street November 2012 Letter; First Trust June 2012 Letter; Grail Letter; Letter from James A. Brigagliano to PowerShares Actively Managed Exchange-Traded Fund Trust (Apr. 4, 2008).

<sup>14</sup> See PowerShares Letter. The adjustments to the basket of an indexed-based ETF would occur as a result of a change in the composition of the relevant index.

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The Trust understands that, except as permitted by the relief from Rule 14e-5 requested herein, any person acting as a dealer-manager is required to comply with the requirements of Rule 14e-5.

IV. Conclusion

Based on the foregoing, we respectfully request that the Commission or Staff grant the relief requested herein. The forms of relief requested are substantially similar to those actions that the Commission and the Staff have taken in similar circumstances. Should you have any questions, please call me at (202) 303-1124.

Sincerely,



Benjamin J. Haskin

cc: Ed Baer, Managing Director, BlackRock  
Deepa Damre, Managing Director, BlackRock  
Josh Banerje, Vice President, BlackRock  
Margery Neale, Willkie, Farr & Gallagher LLP  
Christina Chalk, U.S. Securities and Exchange Commission