



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 19, 2017

**Response of the Office of Mergers and Acquisitions
Division of Corporation Finance**

Allison M. Fumai
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036-6797

**Re: ARK ETF Trust
Request for Exemptive Relief from Exchange Act Rule 14e-5**

Dear Ms. Fumai:

We are responding to your letter requesting exemptive relief dated December 18, 2017 and addressed to Ted Yu. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed photocopy of your correspondence. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your correspondence.

On the basis of the representations made and the facts presented in your letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting exemptive relief from Exchange Act Rule 14e-5.

This exemptive relief permits any Authorized Participant acting as a dealer-manager of a tender offer for a security in which the Funds invest to redeem Shares of the Funds in Creation Unit-sized aggregations that are included in the Deposit Instruments or Redemption Instruments and that may include a subject security or related security as defined under Exchange Act Rule 14e-5(c). The exemptive relief also permits such persons, described in your letter as "covered persons" within the meaning of Exchange Act Rule 14e-5(c)(3)(ii), to engage in secondary market transactions with respect to the Shares after the first public announcement of the tender offer and during such tender offer, given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities. In addition, the exemptive relief permits such covered persons to make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Shares, under the circumstances described in your letter.

To the extent that either the Trust or one of the Funds constitutes a covered person within the meaning of Exchange Act Rule 14e-5(c)(3)(iv), each may also rely upon the exemptive relief granted herein. We note in particular that our grant of relief is conditioned upon the following:

- no purchases of subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer would be effected for the purpose of facilitating a tender offer;
- any purchases of a portfolio security by a dealer-manager during a tender offer will be effected as adjustments to a basket of securities in the ordinary course of business as a result of a change in the composition of a Fund's portfolio; and
- except for the relief specifically granted herein, any broker-dealer acting as a dealer-manager of a tender offer will comply with Exchange Act Rule 14e-5.

The foregoing exemptive relief is based solely on the representations and the facts presented in your letter. The exemptive relief granted is strictly limited to the application of Exchange Act Rule 14e-5 to the transactions described in your letter. These transactions should be discontinued pending further consultations with the Commission staff if any of the facts or representations set forth in your letter change. In addition, this exemptive relief is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Exchange Act Sections 10(b) and 14(e) and Exchange Act Rules 10b-5 and 14e-3, thereunder. The transactions and covered persons within the scope of this exemptive relief must comply with these and any other applicable provisions of the federal securities laws. The Division of Corporation Finance expresses no view on any other questions that these transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, such transactions.

Sincerely,

For the Commission,
By the Division of Corporation Finance
pursuant to delegated authority,

/s/ Ted Yu

Ted Yu
Chief, Office of Mergers & Acquisitions
Division of Corporation Finance

**UNITES STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

December 19, 2017

In the Matter of Transactions in Shares
of ARK ETF Trust

ORDER GRANTING EXEMPTION
FROM EXCHANGE ACT RULE 4E-5

ARK ETF Trust submitted a letter dated December 18, 2017 requesting that the Securities and Exchange Commission (“Commission”) grant an exemption from Exchange Act Rule 14e-5 for the transactions described in its letter (“Request”).

Based on the representation and the facts presented in the Request, and subject to the terms and conditions described in the letter from the Division of Corporation Finance dated December 19, 2017, it is ORDERED that the request for an exemption from Exchange Act Rule 14e-5 is hereby granted.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Brent J. Fields
Secretary

Action as set forth or recommended herein APPROVED
pursuant to authority delegated by the Commission under
Public Law 87-592.

For: Division of Corporation Finance

By: /s/ Ted Yu

Date: December 19, 2017

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December 18, 2017

Ted Yu
Chief
Office of Mergers & Acquisitions
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request of ARK ETF Trust for Exemptive Relief from Rule 14e-5

Dear Mr. Yu:

SUMMARY OF REQUEST FOR RELIEF

I am writing on behalf of ARK ETF Trust (the "Trust"), an open-end investment company, with respect to currently offered funds¹ (each, an "Initial Fund"), each a series of the Trust, and any future series of the Trust that are advised by ARK Investment Management LLC (the "Adviser"), or an entity controlling, controlled by, or under common control with the Adviser (the "Future Funds" and, together with the Initial Funds, are referred to herein as the "Funds"). The Trust, on behalf of itself, the Funds, any national securities exchange or national securities association on or through which shares of the Funds ("Shares")² are listed (each, a "Listing Exchange") and/or may subsequently trade (with each such market referred to herein as a "Market")³, Foreside Fund Services, LLC (the "Distributor") and other persons or entities

¹ The Trust is comprised of, and currently offers, the following funds: ARK Innovation ETF, ARK Genomic Revolution Multi-Sector ETF, ARK Industrial Innovation ETF, ARK Web x.0 ETF, The 3D Printing ETF and ARK Israel Innovative Technology ETF.

² The Shares of ARK Innovation ETF, ARK Genomic Revolution Multi-Sector ETF, ARK Industrial Innovation ETF and ARK Web x.0 ETF are listed on NYSE Arca, Inc. ("NYSE Arca"). The Shares of The 3D Printing ETF and ARK Israel Innovative Technology ETF are listed on BATS Exchange, Inc. ("BATS").

³ In the future, the Trust may determine to list Shares on a Market other than the Listing Exchange. If the Trust lists Shares on a Market other than the Listing Exchange, Shares will be listed in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). If the Shares also trade on a Market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

engaging in transactions in Shares, including APs (as defined below), hereby requests, as applicable, from the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission"), or from the Commission, exemptions regarding Rule 14e-5 under the Exchange Act.

The Trust currently offers Shares of the Initial Funds. Each Initial Fund is, and any Future Funds will be, an exchange-traded fund ("ETF") organized as a series of the Trust. The 3D Printing ETF and ARK Israel Innovative Technology ETF each seek to provide investment results that closely correspond, before fees and expenses, to the performance of an underlying index (each, an "Index") developed by the Index Products Group of ARK Investment Management LLC (the "Index Provider"). In doing so, each Fund normally invests at least 80% of its total assets in securities that are included in the respective Index, depositary receipts representing securities included in the Index or underlying stocks in respect of depositary receipts included in the Index.⁴ Each Index is reconstituted and rebalanced quarterly.

The Commission has issued in the past relief substantially similar to that requested herein to index-based ETFs⁵ that invest directly in securities, as well as substantially similar relief to

⁴ The 3D Printing ETF and ARK Israel Innovative Technology ETF each may also invest up to 20% of its assets in securities and other instruments not included in its Index but that the Adviser 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. The Funds may also invest, to the extent permitted by the Investment Company Act of 1940, as amended (the "1940 Act"), in other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other ETFs.

⁵ See Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Jack P. Drogin of Morgan, Lewis & Bockius, LLP, dated August 4, 2005 (with respect to the iShares MSCI EAFE Growth Index Fund and iShares MSCI EAFE Value Index Fund); Letter from James Brigagliano, Assistant Director, Division of Market Regulation, to Jack P. Drogin, Morgan, Lewis & Bockius LLP, dated October 14, 2004 (with respect to the iShares FTSE/Xinhua China 25 Index Fund); Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Mayer, Brown Rowe & Maw, dated October 21, 2002 (with respect to the Fresco Index Shares Fund); Letters from James A. Brigagliano, Assistant Director, Division of Market Regulation, to W. John McGuire, Morgan, Lewis & Bockius LLP, dated July 25, 2002, to Mary Joan Hoene, Carter, Ledyard & Milburn, dated December 1, 2000, and September 5, 2000, and to Kathleen H. Moriarty, Carter, Ledyard & Milburn, dated May 16, 2000 (with respect to various series of iShares Trust); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Kathleen Moriarty, Carter, Ledyard & Milburn, dated May 21, 2001 (with respect to Vanguard Index Funds); Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Barry A. Mendelson, The Vanguard Group, dated October 20, 2004 (with respect to Vanguard Index Funds); and Letter from James A. Brigagliano, Assistant Director,

various exchange traded products⁶ (collectively, the “Prior ETFs”). The Funds will operate in a manner substantially similar to the Prior ETFs. For example, each Fund will disclose its portfolio holdings on a daily basis (to the extent required by any relevant exemptive relief), and information about the prices of the securities and other instruments held by such Fund will be readily available from a variety of sources.

The Trust does not believe that the Funds raise any significant new regulatory issues that have not already been addressed by the Commission and Staff.⁷ Accordingly, the Trust now hereby requests exemptive relief from Rule 14e-5 under the Exchange Act.

This Letter is divided into five parts. Part I is a description of the Trust and the Initial Funds. Part II contains a discussion of the dissemination of information regarding Shares. Part III contains a discussion of the ETF Class Relief. Part IV contains the request for relief and Part V is the conclusion.

Division of Market Regulation, to Kathleen Moriarty, Carter, Ledyard & Milburn, dated March 9, 2005 (with respect to Vanguard Index Funds).

⁶ See, e.g., Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Michael Schmidtberger, Esq., Sidley Austin Brown & Wood LLP, dated January 19, 2006 (with respect to DB Commodity Index Tracking Fund and DB Commodity Services LLC); Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn, dated December 12, 2005 (with respect to the streetTRACKS Gold Trust); and Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated November 17, 2004 (with respect to the streetTRACKS Gold Trust).

⁷ See Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee, dated November 21, 2005 (re: Expanded class relief for ETFs with respect to Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 under the Exchange Act) (“SIA Letter”); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP, dated October 24, 2006 (re: ETFs comprised of equity securities and incorporating relief from certain prior letters) (“Equity ETF Class Relief Letter”); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP, dated April 9, 2007 (“Fixed Income ETF Class Relief Letter”); Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP, dated June 27, 2007 (re: ETFs that are comprised of both equity and fixed-income securities) (“Combination ETF Class Relief Letter”); Letter from Eduardo A. Aleman, Assistant Secretary, Division of Trading and Markets, to Kinga Kapuscinski, Esq., John Hancock Investments, dated December 7, 2017 (collectively, “ETF Class Relief” or “ETF Class Relief Letters”).

Part I.

A. The Trust and the Initial Funds

The Trust is an open-end investment company currently consisting of six separate ETFs. The Adviser acts as investment adviser to the Funds. Each Fund intends to qualify annually and to elect to be treated as a regulated investment company ("RIC") under the Internal Revenue Code of 1986, as amended (the "Code").

The Shares of the Initial Funds are listed on BATS, or will be listed on another exchange in accordance with exchange listed standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act, and trade at market prices that may differ to some degree from the net asset value (the "NAV") of the Shares. The Shares of the Future Funds are expected to be listed on BATS or NYSE Arca, or will be listed on another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act, and will trade at market prices that may differ to some degree from the NAV of the Shares. Unlike conventional mutual funds, as described further below, the Funds issue and redeem, or will issue and redeem, Shares on a continuous basis, at NAV, only in Creation Units of Shares.

The Adviser anticipates that, generally, each of the Initial Funds will hold all of the securities that compose the relevant Index in proportion to their weightings in the Index. However, under certain circumstances, it may not be possible or practicable to purchase all of those securities in those weightings. In these circumstances, the Funds may purchase a sample of securities in the Index. There also may be instances in which the Adviser may choose to underweight or overweight a security in the Index, purchase securities not in the Index that the Adviser believes are appropriate to substitute for certain securities in the Index, or utilize various combinations of other available investment techniques. The Funds may also sell securities that are represented in the Index in anticipation of their removal from the Index or purchase securities not represented in the Index in anticipation of their addition to the Index. The Funds may also, in order to comply with the tax diversification requirements of the Code, temporarily invest in securities not included in the Index that are expected to be correlated with the securities included in the Index.

The 3D Printing ETF

This Initial Fund normally invests at least 80% of its total assets in securities that are included in the Fund's benchmark Index, depositary receipts representing securities included in the Index or underlying stocks in respect of depositary receipts included in the Index. The Index is designed to track the price movements of stocks of companies involved in the 3D printing

industry. The Index has been created and licensed to the Fund by ARK's Index Products Group and is calculated, published and distributed by Solactive AG ("Solactive"). Information regarding the Index is available at <http://www.solactive.com>. The Index is composed of equity securities and depositary receipts of exchange listed companies from the U.S., non-U.S. developed markets and Taiwan that are engaged in 3D printing related businesses within the following business lines: (i) 3D printing hardware, (ii) computer aided design and 3D printing simulation software, (iii) 3D printing centers, (iv) scanning and measurement, and (v) 3D printing materials. The Index assigns a pre-determined weighting to each business line and all companies within each business line are equally weighted within the business line.

ARK Israel Innovative Technology ETF

This Initial Fund normally invests at least 80% of its total assets in securities that are included in the Fund's benchmark Index, depositary receipts representing securities included in the Index or underlying stocks in respect of depositary receipts included in the Index. The Index is designed to track the price movements of exchange listed Israeli Companies (as defined below) whose main business operations are causing disruptive innovation in the areas of genomics, health care, biotechnology, industrials, manufacturing, the internet or information technology. The Index has been created and licensed to the Fund by ARK's Index Products Group and is calculated, published and distributed by Solactive. Information regarding the Index is available at <http://www.solactive.com>. The Index includes equity securities and depositary receipts of exchange listed companies that are incorporated and/or domiciled in Israel ("Israeli Companies") and are included in one of the following economic sectors as defined by FactSet Research Systems: (i) health technology, (ii) communications, (iii) technology services, (iv) electronic technology, (v) consumer services, or (vi) producer manufacturing. Securities in the Index are equally weighted and weightings are rebalanced quarterly.

B. The Adviser, Distributor and APs

I. Adviser

The Adviser acts as the investment adviser pursuant to an investment advisory agreement with the Trust, on behalf of the Funds (the "Advisory Agreement"). The Adviser, located at 155 W. 19th Street, Floor 5, New York, New York 10011, is registered with the Commission as an investment adviser. Pursuant to the Advisory Agreement, the Adviser is responsible for the day-to-day investment management of the Funds, subject to the general supervision of the Board of Trustees of the Trust (the "Board").

Pursuant to a supervision agreement between the Trust and the Adviser, and also subject to the general supervision of the Board, the Adviser manages the Funds and provides or causes to

be furnished to the Trust (and the Funds) all supervisory and other services reasonably necessary for the operation of the Funds.

2. Distributor and APs

The Board has appointed the Distributor, a broker-dealer registered under the Exchange Act and a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"), to act as the distributor and principal underwriter of the Creation Units of Shares. The Distributor distributes Shares on an agency basis. The Board may appoint a different distributor in the future. Only entities that have entered into an agreement (a "Participant Agreement") with the Distributor to become "authorized participants" ("APs") may place orders with the Distributor to purchase or redeem Creation Units, as described below.

C. Shares

As described in subparts I.D. through I.F. below, each of the Funds will issue and redeem its Shares in Creation Units. Shares will not be individually redeemable securities of the Funds. Purchasers of Creation Units will be able to unbundle the Creation Units into the individual Shares comprising such Creation Unit.

D. Purchasing Shares

The Trust will issue Shares at NAV only in Creation Units and only to APs. Creation Unit transactions to purchase Shares will typically be conducted in exchange for the deposit or delivery of in-kind securities constituting a substantial replication of the securities included in the underlying index of the applicable Fund and/or cash.

Individual Shares of the Funds may only be purchased and sold in secondary market transactions through brokers. Shares are listed for trading on NYSE Arca or BATS and, because Shares will trade at market prices rather than NAV, Shares of the Funds may trade at a price greater than, at, or less than NAV.

E. Procedures Applicable to Purchases of the Funds

The consideration for purchase of Creation Units of each of the Funds may consist of (i) a designated portfolio of securities determined by the Adviser (the "Deposit Instruments") per each Creation Unit that is intended to replicate the performance of the respective Index or (ii) cash in lieu of all or a portion of the Deposit Instruments together with, in each case, an amount of cash - the "Cash Amount" - computed as described below. Together, the Deposit Instruments (including the cash in lieu amount) and the Cash Amount constitute the "Creation Deposit,"

which represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund.

The Cash Amount serves the function of compensating for any differences between the NAV per Creation Unit and the Deposit Amount (as defined below). The Cash Amount is an amount equal to the difference between the NAV of Shares (per Creation Unit) and the market value of the Deposit Instruments and/or cash in lieu of all or a portion of the Deposit Instruments (the "Deposit Amount"). If the Cash Amount is a positive number (i.e., the NAV per Creation Unit exceeds the Deposit Amount), the creator will deliver the Cash Amount. If the Cash Amount is a negative number (i.e., the NAV per Creation Unit is less than the Deposit Amount), the creator will receive the Cash Amount.

The Funds' administrator ("Administrator"), through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, prior to the opening of business of the Listing Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Instruments to be included in the current Creation Deposit (based on information at the end of the previous business day) for a Fund (subject to possible amendment or correction).

In order to be eligible to place orders with the Distributor and to create a Creation Unit of a 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 (the "Clearing Process"), a clearing agency that is registered with the Commission; or (ii) a participant that uses the facilities of The Depository Trust Company ("DTC," and such participant, a "DTC Participant").

All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than the closing time of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m., Eastern Time) ("Closing Time") in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of a Fund as next determined on such date after receipt of the order in proper form.

A fixed creation transaction fee (the "Creation Transaction Fee") is applicable to each purchase transaction regardless of the number of Creation Units purchased in the transaction. When a Fund (i) permits an AP to substitute cash in lieu of depositing one or more of the requisite Deposit Instrument or (ii) issues Creation Units outside the Clearing Process, such Fund may assess a separate, variable transaction fee to an AP to cover the cost of purchasing the Deposit Instruments, including operational processing and brokerage costs, transfer fees, stamp

taxes, and part or all of the spread between the expected bid and offer side of the market related to such Deposit Instruments.

To the extent contemplated in the applicable Participant Agreement, Shares of a Fund may be issued in advance of receipt of all Deposit Instruments subject to various conditions, including an undertaking by the AP to deliver the missing Deposit Instruments as soon as possible, which undertaking will be secured by the delivery and maintenance of collateral.

F. Procedures Applicable to Redemptions of the Funds

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 through the Distributor and only on a business day. The Administrator, through the NSCC, will make available prior to the opening of business on the Listing Exchange (currently 9:30 a.m., Eastern Time) on each business day, the identity of the Redemption Instruments (defined below) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day.

Unless cash redemptions are permitted or required for a Fund,⁸ the redemption proceeds for a Creation Unit generally consist of a portfolio of in-kind securities (“Redemption Instruments”) as announced on the business day of the request for redemption received in proper form-plus or minus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments (the “Cash Redemption Amount”), less the applicable Redemption Transaction Fee (defined below) and, if applicable, any variable redemption fees relating to operational processing and brokerage costs, transfer fees or stamp taxes. In the event that the Redemption Instruments have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference plus the applicable Redemption Transaction Fee and, if applicable, any operational processing and brokerage costs, transfer fees or stamp taxes, is required to be made by or through an AP by the redeeming shareholder.

Orders to redeem Creation Units through the Clearing Process must be delivered through an AP that has executed a Participant Agreement. Investors other than APs are responsible for making arrangements for a redemption request to be made through an AP. An order to redeem Creation Units of a Fund is deemed received by the Trust on a particular date (the “Transmittal Date”) if: (i) such order is received by the Distributor not later than the Closing Time on the Transmittal Date; and (ii) all other procedures set forth in the Participant Agreement are properly followed.

⁸ Redemption payments may be made in cash, in-kind, or a combination of both.

Orders to redeem Creation Units outside the Clearing Process must be delivered through a DTC Participant that has executed the Participant Agreement. A DTC Participant who wishes to place an order for redemption of Creation Units to be effected outside the Clearing Process does not need to be a Participating Party, but such orders must state that the DTC Participant is not using the Clearing Process and that redemption of Creation Units will instead be effected through transfer of Shares directly through DTC. An order to redeem Creation Units outside the Clearing Process is deemed received by the Trust on the Transmittal Date if (i) such order is received by the Administrator not later than 4:00 p.m., Eastern time on such Transmittal Date; (ii) such order is accompanied or followed by the requisite number of Shares, which delivery must be made through DTC and the compensating cash payment, if any owed to a Fund, to the Administrator no later than 11:00 a.m., Eastern time on the contractual settlement date; and (iii) all other procedures set forth in the Participant Agreement are properly followed.

A redemption transaction fee (the "Redemption Transaction Fee") is applicable to each redemption transaction regardless of the number of Creation Units redeemed in the transaction. Investors will also bear the costs of transferring the Redemption Instruments from the Trust to their account or on their order. A shareholder may request a cash redemption in lieu of securities; however, a Fund may, in its discretion, reject any such request.

Part II.

A. Dissemination of Information about Deposit Instrument and Redemption Instruments

As discussed above, the names and required number of shares of the Deposit Instruments and Redemption Instruments to be tendered in connection with the issuance or redemption, respectively, of Shares of Creation Units will be made available on each business day prior to the opening of trading.

B. Dissemination of Information about the Funds' Portfolio Securities

The prices of the Funds' portfolio securities ("Portfolio Securities") will be readily available from, as applicable, the relevant listing Market, other Markets, automated quotation systems, and other sources, such as independent pricing services.

C. Dissemination of Information about Shares

In order to provide current Share pricing information for a Fund for use by investors, professionals and persons wishing to create or redeem Shares, (i) the Listing Exchange will disseminate continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share and (ii) the Listing 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. Comparing these two figures will allow an investor to determine whether, and to what extent, Shares are selling at a premium or a discount to NAV.

The Funds' website (the "Website") will also contain the following information on a per Share basis for each Fund: (i) the prior business day's NAV, the closing market price, the midpoint of the bid-ask spread at the time of calculation of the NAV (the "Bid/Ask Price"), and a calculation of the premium or discount of the Bid-Ask Price at the time of calculation of the NAV against such NAV; and (ii) data displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Website will also display each of the Funds' Prospectus and additional quantitative information that is updated on a daily basis.

Part III.

A. Comparison of the Funds to the Other ETFs Which Have Sought Similar Commission Action and Received Similar Relief

The Trust believes that the relief requested herein is substantially similar to the relief granted by the Commission to the Prior ETFs.

B. Applicability of the ETF Class Relief to the Funds

The ETF Class Relief provides exemptive and/or no-action or interpretive relief with respect to Rules 10b-17 and 14e-5, as well as Rules 101 and 102 of Regulation M, under the Exchange Act to any ETF that meets the criteria set forth in the Equity ETF Class Relief Letter. The Equity ETF Class Relief Letter sets forth five criteria that an ETF must meet in order to rely upon the ETF Class Relief. These are:

1. The ETF Shares are issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act;
2. The ETF consists of a basket of twenty or more Component Securities,⁹ with no one Component Security constituting more than 25% of the total value of the ETF;¹⁰

⁹ For purposes of the Commission's response, "Component Securities" are defined as individual securities that comprise the ETF basket, e.g., securities that are assembled to replicate the particular index that the ETF tracks.

3. At least 70% of the ETF must be comprised of Component Securities that meet the minimum public float and minimum average daily trading volume thresholds under the 'actively-traded securities' definition found in Regulation M for excepted securities during each of the previous two months of trading prior to the formation of the relevant ETF; provided, however, that if the ETF has 200 or more Component Securities then 50% of the Component Securities must meet the actively-traded securities thresholds;

4. ETF shares are to be issued and redeemed in Creation Unit aggregations of 10,000 shares or such other amount where the value of a Creation Unit is at least \$250,000 at the time of issuance; and

5. The ETF must be managed to track a particular index all the components of which have publicly available last sale trade information. The intra-day proxy value of the ETF per share and the value of the 'benchmark' index must be publicly disseminated by a major market data vendor throughout the trading day.¹¹

Each of the Funds will meet all of the criteria of the Equity ETF Class Relief Letter set forth above.¹²

Further, the Trust hereby represents that: (a) the Trust anticipates that the arbitrage mechanism will be facilitated by the transparency of the Funds' portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Funds and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges; (b) the Funds will meet each of the conditions of the Equity Class Relief Letter; (c) 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; (d) the Trust believes that arbitrageurs are expected to take advantage of price variations between the Funds' market price and its NAV; and (e) a close alignment between the market price of Shares and a Fund's NAV is expected. Therefore, the Trust hereby requests that the Commission grant exemptive relief from Rule 14e-5 as discussed below.

¹⁰ For purposes of the Commission's response, whether any one Component Security constitutes more than 25% of the total value of the ETF shall be determined as of the most recent rebalancing of the ETF's reference securities index.

¹¹ See Equity ETF Class Relief Letter at 2-3.

¹² Additionally, the Trust notes that there is no minimum Creation Unit size imposed by the Commission's Division of Market Regulation: Staff Legal Bulletin No. 9 (Frequently Asked Questions About Regulation M) ("SLB").

Part IV.

A. Requests for Relief-Introduction

The Trust, on behalf of itself, the Funds, the Listing Exchange, other Markets, the Distributor, APs and other persons or entities engaging in transactions in the Shares, requests that the Commission grant exemptive relief from Rule 14e-5 under the Exchange Act.

I. Rule 14e-5

The Trust, on behalf of itself, the Funds and APs that act as dealer-managers of tender offers, as applicable, requests that the Commission grant exemptive relief from Rule 14e-5 under the Exchange Act in connection with transactions that involve “subject securities” and “related securities” (as defined in Rule 14e-5(c)(6) and (7)) that are included in the Deposit Instruments or Redemption Instruments.

Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging to purchase any equity securities that are the subject of a tender offer (“subject securities”) or any securities immediately convertible into, exchangeable for, or exercisable for subject securities (“related securities”) except as part of such tender offer. The fact that most APs are broker-dealers implicates Rule 14e-5 because the term “covered person” includes, among other things, a dealer-manager of a tender offer. The term “covered person” also includes any person acting, directly or indirectly, in concert with other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities. Therefore, the Trust also is seeking relief in the event it or a Fund may be deemed to be a “covered person” by virtue of a Participant Agreement pertaining to the Trust and the Funds (collectively, “Covered Persons”).

In order to address situations in which an AP acts as a dealer-manager of a tender offer, and a subject security or a related security is part of a group of securities that is received by a Fund when it issues a Creation Unit or part of a group of securities that a Fund distributes when it redeems a Creation Unit (*i.e.*, part of the Deposit Instruments or the Redemption Instruments), the Trust respectfully requests the Commission grant the exemption from Rule 14e-5 as it applies to such APs. The exemption would permit APs acting as dealer-managers to execute transactions that include, or are deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, but that are not effected for the purpose of facilitating a tender offer and that are conducted in the ordinary course of business, or otherwise necessary for a Fund to conduct normal business operations (in each case, from the time of the public announcement of the tender offer until the tender offer expires). An AP’s ordinary course of business is: (i) redeeming Shares in Creation Units for Redemption Instruments that may include a subject

security or a related security; and (ii) engaging in secondary market transactions in Shares during such offer.

With respect to redemptions, the acquisition of individual Redemption Instruments 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 addition, application of the Rule's prohibition would impede the valid and useful market and arbitrage activity which would assist secondary market trading and improve Share pricing efficiency. In no case would redemptions of Shares or secondary market transactions by Covered Persons 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 respectfully requests that the Commission grant exemptive relief from Rule 14e-5 if an AP acting as a dealer-manager of a tender offer for a Deposit Instrument purchases such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Units. **The Trust acknowledges that Rule 14e-5(b)(5) provides an exception to its prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) such bids or purchases are effected 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 purchased (the "Basket Exception").** In order to address situations where the basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of the basket, the Trust respectfully requests that the Commission provide an exemption under Rule 14e-5 if an AP acting as a dealer-manager of a tender offer purchases or arranges to purchase subject securities or related securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit, if such purchases are not effected for the purpose of facilitating such tender offer and are made in the ordinary course of business. Relief would be necessary in order to permit APs to effect purchases of subject securities and related securities under such circumstances given that the Basket Exception would not be available. This extension of the Basket Exception would accommodate a potential factual circumstance associated with the operations of ETFs and would be consistent with the rationale underlying the adoption of the Basket Exception. The Trust notes, in particular, that purchases would not be effected for the purpose of facilitating a tender offer.¹³

¹³ As discussed in Exchange Act Release No. 42,055 (October 22, 1999), "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. In

Part V.

A. Conclusion

Based on the foregoing, the Trust respectfully requests that the Commission and the Division of Corporation Finance grant the relief requested herein. As more fully discussed above, the Trust, on behalf of itself, the Funds, and APs who act as dealer-managers of tender offers, is requesting that the Commission grant exemptions from Rule 14e-5 to permit any APs acting as a dealer-manager of a tender offer, under the circumstances described herein, (1) to execute transactions that include, or are deemed to include, purchases of, or arrangements to purchase, subject securities or related securities in connection with (a) redeeming Shares in Creation Units for Redemption Instruments and (b) engaging in secondary market transactions in Shares during such offer and (2) to purchase or arrange to purchase subject securities and related securities in the secondary market for the purpose of transferring such securities to purchase Creation Units. **The forms of relief requested are virtually identical to those actions which the Commission and the Division of Corporation Finance have taken in similar circumstances.**

Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call me at (212) 698-3526.

Sincerely,



Allison M Fumai

AMF

cc: Thomas Staudt
Kellen Carter

this regard, the Trust believes that it would be inefficient to facilitate a tender offer in a particular security by means of purchasing all of the securities identified as Deposit Instruments.