



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

May 24, 2011

Jeremy Senderowicz  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036

**Re: Claymore Exchange-Traded Fund Trust**  
**File No. TP 11-12**

Dear Mr. Senderowicz:

In your letter dated May 24, 2011, as supplemented by conversations with the staff of the Division of Trading and Markets ("Division"), Claymore Exchange-Traded Fund Trust (the "Trust") requests exemptive, interpretive, or no action relief with respect to Rule 10b-17 under the Securities Exchange Act of 1934, as amended ("Exchange Act"). We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

The Trust was organized on May 24, 2006 as a Delaware statutory trust. The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The Trust is currently comprised of twenty-five series (each, a "Fund"), including the Claymore U.S. Capital Markets Bond ETF ("Converting ETF #1") and the Claymore U.S. Capital Markets Micro-Term Fixed Income ETF ("Converting ETF #2" and together with Converting ETF #1, the "Converting ETFs"). You represent that the Converting ETFs currently meet the requirements of the class relief letters for index ETFs.<sup>1</sup> However, as a result of the conversion of these funds from an index-based to an actively-managed strategy, the Converting ETFs will no longer be able to rely upon these letters for relief from Rule 10b-17.

Response:

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution, stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b). On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the concerns that the Commission raised in adopting Rule 10b-17 will generally not be implicated if exemptive relief is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution

<sup>1</sup>

See, e.g., Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin J. Haskin, Esq., Willkie Farr & Gallagher, LLP (Apr. 9, 2007).

and Shares of the Converting ETFs are listed on an Exchange, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.<sup>2</sup>

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- Rule 10b-17(b)(1)(v)(a) and (b) will be complied with as soon as practicable before trading begins on the ex-dividend date, but in no event later than the end of regular business hours for the Exchange the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemptive relief are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with this and other provisions of the federal or state securities laws must rest with persons relying on this exemptive relief. The Division expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority,



Josephine J. Tao  
Assistant Director

Attachment

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<sup>2</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Converting ETFs. This is because it is not possible for the Trust to accurately project ten days in advance the information required by these provisions.

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May 24, 2011

Josephine J. Tao, Esq.  
Assistant Director  
Office of Trading Practices and Processing  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Claymore Exchange-Traded Fund Trust: Request for Exemptive, Interpretive or No-Action Relief from Rule 10b-17, promulgated under the Securities Exchange Act of 1934, for Actively-Managed, Exchange-Traded Fixed Income Funds

Dear Ms. Tao:

Claymore Exchange-Traded Fund Trust (the "Trust") was organized on May 24, 2006 as a Delaware statutory trust and is registered with the Securities and Exchange Commission (the "Commission" or the "SEC") as an open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust is currently comprised of twenty-nine series (each, a "Fund" or "ETF"), including the Claymore U.S. Capital Markets Bond ETF ("Converting ETF #1") and the Claymore U.S. Capital Markets Micro-Term Fixed Income ETF ("Converting ETF #2" and together with Converting ETF #1, the "Converting ETFs"). Guggenheim Funds Advisors, LLC (formerly known as Claymore Advisors, LLC; the "Investment Adviser") oversees the business affairs of the Converting ETFs and provides or oversees the provision of all administrative and investment advisory services to the Converting ETFs. The Investment Adviser is responsible for selecting portfolio securities ("Portfolio Securities") for the Converting ETFs. Each Converting ETF commenced operations on February

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12, 2008 and has operated since that date as an index-based ETF, but is converting to an actively-managed ETF on or about June 1, 2011.<sup>1</sup>

The Trust, on behalf of itself and the Converting ETFs, hereby requests that the Securities and Exchange Commission grant exemptive, interpretive or no-action relief from Rule 10b-17 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Trust issues and redeems shares of the Converting ETFs ("Shares") in aggregations of 100,000 Shares ("Creation Unit Aggregations"). The Trust has filed a post-effective amendment to its registration statement on Form N-1A with respect to the Converting ETFs' conversion to actively-managed ETFs and the Shares are listed on an Exchange. The Trust is overseen by a board of trustees (the "Board") that will maintain the composition requirements of Section 10 of the Investment Company Act of 1940, as amended (the "1940 Act"). The Converting ETFs have adopted fundamental policies consistent with the 1940 Act and are classified as "non-diversified" under the 1940 Act. The Converting ETFs intend to maintain the required level of diversification, and otherwise conduct their operations, so as to meet the regulated investment company diversification requirements of the Internal Revenue Code of 1986, as amended.

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<sup>1</sup> In connection with their conversion to actively-managed ETFs, the Claymore U.S. Capital Markets Bond ETF and the Claymore U.S. Capital Markets Micro-Term Fixed Income ETF will be changing their names to the Guggenheim Enhanced Core Bond ETF and the Guggenheim Enhanced Ultra-Short Bond ETF, respectively.

The SEC staff (“Staff”) has previously issued relief substantially similar to that requested herein to actively-managed exchange-traded funds (“ETFs”),<sup>2</sup> as well as index-based ETFs listed and traded on a national securities exchange, which meet certain conditions.<sup>3</sup> During the period which the Converting ETFs have operated as index-based ETFs, the Converting ETFs have relied upon the aforementioned class relief provided to index-based ETFs listed and traded on a national

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<sup>2</sup> See Letter from Josephine Tao, Esq., Assistant Director, Division of Trading and Markets, to PIMCO ETF Trust Actively Managed Fixed Income Exchange Traded Fund, dated November 10, 2009 (“PIMCO Letter”); Letter from Josephine Tao, Esq., Assistant Director, Division of Trading and Markets, to WisdomTree Trust, dated May 9, 2008 (“WisdomTree Letter F”) and Letter from Josephine Tao, Esq., Assistant Director, Division of Trading and Markets, to WisdomTree Trust Real Return Actively Managed ETF, dated May 27, 2010 (“WisdomTree Letter II”, and together with WisdomTree Letter I, the “WisdomTree Letters”); Letter from James A. Brigagliano, Esq., Associate Director, Division of Trading and Markets, to PowerShares Actively Managed Exchange Traded Fund Trust, dated April 4, 2008 (“PowerShares Letter”); Letter from Josephine Tao, Esq., Assistant Director, Division of Trading and Markets, to Grail Advisors ETF Trust, dated April 30, 2009 [revised – May 6, 2009] (“Grail Letter”); and Letter from Josephine Tao, Esq., Assistant Director, Division of Trading and Markets, to AdvisorShares Trust Actively-Managed ETF, WCM/BNY Mellon Focused Growth ADR, dated June 18, 2010 (“AdvisorShares Letter”). In the WisdomTree Letter I, 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. The Staff stated that it therefore would not respond to requests for relief under Section 11(d)(1) or Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 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 and 15c1-6 under the Exchange Act.

<sup>3</sup> See Letter from James A. Brigagliano, Esq., Associate Director, Division of Market Regulation, regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007; Letter from James A. Brigagliano, Esq., Acting Associate Director, Division of Market Regulation, to PowerShares Exchange-Traded Fund Trust regarding Class Relief for Exchange Traded Index Funds, dated October 24, 2006; Letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Claire P. McGrath, Vice President and Special Counsel, The American Stock Exchange, regarding relief for Exchange Traded Index Funds, dated August 17, 2001; see also Letter from Josephine Tao, Esq., Assistant Director, Division of Market Regulation, regarding Combination Exchange-traded Funds, dated June 27, 2007.

securities exchange (each such exchange, an “Exchange”), which meet certain conditions. The PIMCO Letter, WisdomTree Letters, PowerShares Letter, Grail Letter and AdvisorShares Letter each provided relief specific to the ETFs described therein and, therefore, the Trust and the Converting ETFs are not entitled to rely on those letters for relief. Further, because the Converting ETFs are converting from index-based ETFs to actively-managed ETFs, they are not entitled to rely on the relief previously provided to index-based ETFs as a class.

The Trust and the Converting ETFs note, however, that their proposal—the creation and issuance by an actively-managed investment company of shares that individually trade on an Exchange, but that can only be purchased from and redeemed with the issuing investment company in large aggregations—is no longer novel. The Commission has in the past sixteen years considered and approved many similar proposals. Some of the index-based products for which relief has been granted have been trading publicly for years, and the Trust is not aware of any abuses associated with them. Indeed, several of the index-based products have been so embraced by investors that they are routinely among the highest volume securities on the exchanges on which they trade.<sup>4</sup>

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<sup>4</sup> The SEC has previously granted exemptive or no-action relief under Rules 10a-1, 10b-6, 10b-7, 10b-10, 14c-5 (formerly, 10b-13), 10b-17, 11d1-2, 15c1-5, 15c1-6 and Regulation M under the Exchange Act similar to that requested here. *See, e.g.*, Letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation to James F. Duffy, Senior Vice President and General Counsel, AMEX, dated January 22, 1993 with respect to the trading of the SPDR Trust, Series 1; Letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation to James F. Duffy, Executive Vice President and General Counsel, AMEX, dated April 21, 1995 with respect to the

The Converting ETFs, like the ETFs described in the PIMCO Letter, WisdomTree Letters, PowerShares Letter, Grail Letter and AdvisorShares Letter, will differ from index-based ETFs to the extent that they are “actively managed.” However, the Converting ETFs’ portfolios will be fully transparent and thereby permit arbitrage activity to the same extent as index-based ETFs. In all other material respects, the Converting ETFs will operate in the same manner as index-based ETFs. Therefore, while the Converting ETFs will be actively managed, the Trust does not believe that they raise any significant new regulatory issues.

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trading of the MidCap SPDR Trust; Letters from Larry E. Bergman, Senior Associate Director, Division of Market Regulation and James A. Brigagliano, Assistant Director, Division of Market Regulation to Stuart M. Strauss, Gordon, Altman, Butowsky, Weitzen, Shalov & Wein, dated December 14, 1998 and December 22, 1998, respectively, each with respect to the trading of the Select Sector SPDR Trust; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to James F. Duffy, Executive Vice President and General Counsel, AMEX, dated March 3, 1999 with respect to the trading of the Nasdaq-100 Trust, Series 1; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Kathleen H. Moriarty, Carter, Ledyard & Milburn, dated May 16, 2000 with respect to the trading of the iShares Trust; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Stuart M. Strauss, Mayer, Brown & Platt, dated September 26, 2000 with respect to the trading of the streetTRACKS® Series Trust; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to W. John McGuire, Morgan, Lewis & Bockius LLP, dated July 25, 2002 with respect to the trading of various series funds of the iShares Trust; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Stuart M. Strauss, Mayer, Brown, Rowe & Maw, dated October 21, 2002 with respect to the trading of the FrescoSM Index Shares Funds; Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Jack P. Drogin, Morgan, Lewis & Bockius LLP, dated September 25, 2003 with respect to the trading of the iShares Lehman U.S. Treasury Inflation Protected Securities Fund and the iShares Lehman U.S. Aggregate Bond Fund (each a series of the iShares Trust).

**The Converting ETFs' Amended Investment Objective and Strategies**

Converting ETF #1's investment objective will be total return, comprised of income and capital appreciation. Converting ETF #2's investment objective will be maximum current income, consistent with preservation of capital and daily liquidity.

The Converting ETFs will primarily invest in U.S. dollar-denominated investment grade debt securities. The Converting ETFs may invest in high yield securities ("junk bonds"). Converting ETF #2 may also invest in municipal securities. Converting ETF #2 may invest a substantial portion of its assets in short-term instruments such as commercial paper and/or repurchase agreements. The Converting ETFs may invest in a wide range of fixed income instruments selected from, but not limited to, the following sectors: U.S. Treasury securities, corporate bonds, emerging market debt and non-dollar denominated sovereign and corporate debt.

**Rule 10b-17**

Rule 10b-17 requires an issuer of a class of publicly-traded securities to give notice of certain specified actions (*e.g.*, dividends, stock splits, rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Specifically, Rule 10b-17(b)(1)(v)(a-b) require such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share<sup>5</sup>, and (b) for in-kind distributions, the amount of the security outstanding

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<sup>5</sup> The rule permits a reasonable approximation of the per share distribution to be provided if exact amounts cannot be given because of existing conversion rights which may be exercised during the

immediately prior to and immediately following the dividend or distribution and the rate of such dividend or distribution. Paragraph (c) of the Rule, however, states that the Rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act. Except for the fact that redemption is subject to the minimum condition of tendering a Creation Unit Aggregation of Shares, the Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the foregoing, the Division of Investment Management issued an order permitting the Trust to issue shares with limited redeemability while still treating the Trust like any other open-end investment company.

In addition, compliance with Rule 10b-17(b)(1)(v)(a-b) would be impractical in light of the nature of the Converting ETFs. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Because of this inability to project the amount of any dividend ten days in advance of a record date, applying the timing requirements of 10b-17(b)(1)(v)(a-b) to the Trust would increase the chances that the Trust would mis-estimate the amount of any such dividend.<sup>6</sup>

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notice period and may affect the per share cash distribution, as long as the actual per share distribution is subsequently provided on the record date.

<sup>6</sup> As an investment company, the Trust is required by the Internal Revenue Code to distribute at least 98% of its ordinary income and capital gains during the calendar year. If the Trust declares too small a dividend, it will be charged an excise tax. If it declares too large a dividend, the excess could be considered a return of capital to investors. To avoid an over- or under-distribution of

The Trust represents that it will comply with the other requirements of Rule 10b-17. The Trust further represents that, as soon as practicable following the end of trading on the Exchange on the day prior to the ex-date (but no later than the Exchange's close of business on such date) with respect to any distribution made by a Fund, the Trust will provide notice to the Exchange containing the information required in Rule 10b-17(b)(1)(v)(a-b).

In the proposing release for Rule 10b-17 (the "Proposing Release")<sup>7</sup>, the Commission stated:

It has been the experience of the Commission and the securities industry that the failure of a publicly held company to provide a timely announcement of the record date with respect to these types of rights has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failure, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of such rights and were thus unable to take necessary steps to protect their interests. Further, sellers who have received the benefits of such rights as recordholders on the specified record date after having disposed of their

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ordinary income, registered investment companies, including the Trust, must estimate: (i) the amount of ordinary income to be earned during the period from the date the dividend is declared to December 31; and (ii) the number of shares that will be outstanding as of the record date. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date would increase the period for estimating ordinary income and the number of outstanding shares, and thus increase the risk of an over- or under-distribution. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date also would increase the chance that the Trust would over- or under-distribute capital gains. Further, unlike ordinary income, the Trust does not have the problem of estimating the aggregate amount of capital gains it will earn between declaration date and year-end, but as noted above, requiring the Trust to declare the amount of a dividend ten days in advance of the record date would increase the chance that the Trust would misestimate the number of outstanding shares. This, in turn, would increase the chance that the Trust would mis-estimate the per share amount of capital gains it must distribute.

<sup>7</sup> Exchange Act Release No. 9076 (February 17, 1971).

securities, have also disposed of the cash or stock dividends or other rights received as such recordholders without knowledge of possible claims of purchasers of the underlying security to those rights....In many instances, innocent buyers and sellers have suffered losses. In addition, some issuers have made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.

We respectfully submit that none of these concerns raised by the Commission in the Proposing Release<sup>8</sup> will be implicated if the requested relief is granted. As set forth above, the Trust will comply with the requirements of Rule 10b-17 except for the timing requirements for notification of the actual amounts of the distributions under Rule 10b-17(b)(1)(v)(a-b). Accordingly, market participants will receive timely notification of the existence and timing of a pending distribution, and will be able to plan their transactions in Fund shares accordingly. As a result, there should be no confusion or opportunity for manipulation regarding parties' rights to receive distributions, which concerns inspired the Commission to propose and adopt Rule 10b-17. Therefore, the requested relief concerning the timing requirements of Rule 10b-17(b)(1)(v)(a-b) is consistent with the purposes underlying the adoption of Rule 10b-17 as outlined in the Proposing Release and Adopting Release. The exemption under paragraph (c) of Rule 10b-17, which covers open-end investment companies with fully redeemable shares, thus should be applicable to the Trust with respect to the timing requirements of Rule 10b-17(b)(1)(v)(a-b).

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<sup>8</sup> The foregoing concerns were largely reiterated by the Commission in the release adopting Rule 10b-17. See Exchange Act Release No. 9192 (June 7, 1971) (the "Adopting Release").

**Conclusion**

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. If the Commission or the Staff believes that a different format is appropriate (for example, a no-action position rather than an exemption), we would appreciate the opportunity to revise this request for relief accordingly. Should you have any questions please call me at 212.641.5669.

Sincerely,



Jeremy Senderowicz

cc: David Bloom, Esq.  
Bradley Gude, Esq.  
Securities and Exchange Commission