



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 29, 2011

Mr. Jack P. Drogin, Esq.
Schiff Hardin LLP
1666 K Street N.W., Suite 300
Washington, DC 20006

Re: WisdomTree Global Real Return Fund
File No. TP 11-17

Dear Mr. Drogin:

In your letter dated August 29, 2011, as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), you request on behalf of the WisdomTree Trust (the "Trust") and the WisdomTree Global Real Return Fund (the "Fund") relief from 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 in your letter, unless we note otherwise.

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) 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 generally will 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, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.*

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but

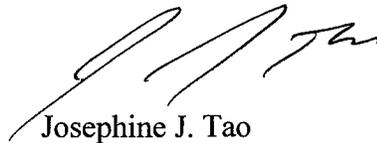
* We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Trust. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

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in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission 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 exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive position. The Division expresses no view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

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



Josephine J. Tao
Assistant Director

Attachment



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100 F Street, N.E.
Washington, DC 20549

Re: Request of WisdomTree Trust and WisdomTree Global Real Return Fund an Actively-Managed Fund for Exemptive Relief from Rule 10b-17 under the Securities Exchange Act of 1934

Dear Ms. Tao:

SUMMARY OF REQUEST FOR RELIEF

We are writing on behalf of the WisdomTree Trust (“Trust”) and the WisdomTree Global Real Return Fund (the “Fund”), a series of the Trust described herein. The Trust and the Fund hereby request from the staff of the Division of Trading and Markets (“Staff”) of the Securities and Exchange Commission (“Commission”), exemptive relief from Rule 10b-17 under the Securities Exchange Act of 1934 (the “Exchange Act”).¹ The Fund is an exchange traded fund organized as an open-end management investment company (an “ETF”).

¹ The shares of the Fund (“Shares”) are listed on NYSE Arca, Inc. (the “Listing Exchange”), as described herein, pursuant to a proposed rule change by NYSE Arca, Inc. that was approved by the Commission pursuant to Section 19(b) of the Exchange Act. *See* Securities Exchange Act Release No. 64643 (June 10, 2011). In addition, the Commission granted the requested relief to the Trust from the application of certain sections of the Investment Company Act of 1940 and the rules promulgated thereunder (*see* Rel. No. IC-28471 (October 27, 2008)).

In the future, the Trust may determine to list Shares on a market other than the Listing Exchange (each such market, a “Market”). 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 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 Exchange Act Section 19(b).



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The Fund is actively managed. WisdomTree Asset Management, Inc. (“Adviser”), the investment adviser to the Fund, selects securities and other instruments consistent with the Fund’s investment objective and policies without reference to the composition of an index.²

The Staff, by delegated authority,³ has previously issued exemptive relief from Rule 10b-17 to index-based ETFs that are listed and traded on a national securities exchange and that meet certain other conditions (“Prior Index ETFs”).⁴ The Staff also has issued exemptive relief from Rule 10b-17 to non-index-based or “actively managed” ETFs, including actively managed ETFs issued by the Trust, that are listed and traded on a national securities exchange and that meet certain other conditions (the “Prior Actively Managed ETFs”).⁵ Prior Index ETFs and Prior Actively Managed ETFs may be referred to collectively as the “Prior ETFs.” The Fund operates in a manner substantially identical to the Prior ETFs.

² Mellon Capital Management (“Sub-Adviser”) serves as the sub-adviser for the Fund. The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility. ALPS Distributors, Inc. (“Distributor”) serves as the distributor of the Fund.

³ 17 CFR 200.30-3(a)(9).

⁴ See Letter from Josephine Tao to Paul, Hastings, Janofsky and Walker LLP regarding Class Relief for Combination Exchange Traded Funds, dated June 27, 2007; Letter from James A. Brigagliano to Wilkie Farr & Gallagher, LLP regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007 (the “Fixed Income Class Relief Letter”); Letter from James A. Brigagliano to PowerShares Exchange Traded Fund Trust regarding Class Relief for Exchange Traded Index Funds, dated October 24, 2006; Letter from James A. Brigagliano to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange LLC, dated August 17, 2001.

⁵ See Letter from Josephine Tao to Schiff Hardin LLP, regarding the WisdomTree Asia Local Debt Fund, dated August 16, 2011; Letter from Josephine Tao to Schiff Hardin LLP, regarding the WisdomTree Managed Futures Strategy Fund, dated August 16, 2011; and Letter from Josephine Tao to Dechert LLP, regarding Claymore Exchange-Traded Fund Trust, dated May 24, 2011. See, also, Letter from Victoria L. Crane to Schiff Hardin LLP regarding the WisdomTree Dreyfus Commodity Currency Fund, an Actively-Managed ETF, dated September 2, 2010; Letter from Josephine Tao to Schiff Hardin LLP regarding WisdomTree Emerging Markets Local Debt Fund an Actively Managed ETF, dated August 6, 2010; Letter from Josephine Tao to Morgan, Lewis & Bockius LLP, regarding AdvisorShares Trust Actively-Managed ETF/ WCM/BNY Mellon Focused Growth ADR, dated June 18, 2010; Letter from Josephine Tao to WisdomTree Trust Real Return Actively Managed ETF, dated May 27, 2010; Letter from James A. Brigagliano to Morgan, Lewis & Bockius LLP, regarding U.S. One Trust Actively-Managed ETF of ETFs, dated May 4, 2010; Letter from Josephine Tao to Grail Advisors ETF Trust Actively Managed Fixed Income Exchange Traded Fund, dated January 27, 2010; Letter from Josephine Tao to PIMCO ETF Trust Actively Managed Fixed Income Exchange Traded Fund, dated November 10, 2009; Letter from Josephine Tao to Grail



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The letters for the Prior ETFs provided relief specific to the funds described therein and, therefore, the Trust and the Fund are not entitled to rely on those letters for relief. The Trust and the Fund note, however, that their proposal – the creation and issuance by an actively-managed investment company of shares that individually trade on a national securities exchange, but that can only be purchased from and redeemed with the issuing investment company in large aggregations – is no longer novel. For this reason, we do not believe that the Fund raises any significant new regulatory issues. In light of the many instances of exemptive relief previously issued, and based on discussions with the Staff, we hereby request exemptive relief from Rule 10b-17 under the facts and representations presented below.

THE TRUST AND THE FUND

The Trust was organized as a Delaware statutory trust on December 15, 2005 and is authorized to have multiple series or portfolios, one of which is the subject of this request. The Trust is registered with the Commission under the Investment Company Act of 1940 (“1940 Act”), as an open-end management investment company and currently offers over fifty (50) separate investment portfolios.

The Trust currently lists the Shares on NYSE Arca, Inc.⁶ The Trust offers and sells such shares pursuant to an amendment to its Registration Statement (Registration Nos. 811-21864 and 333-132380) on Form N-1A under the 1940 Act and the Securities Act of 1933 (“1933 Act”). The Fund’s Registration Statement is effective and is dated June 27, 2011.

The Fund seeks total returns that exceed the rate of inflation over long-term investment horizons. To achieve its objective, the Fund will invest in Fixed Income Securities⁷ and other instruments designed to provide protection against inflation. The Fund is actively managed and will have targeted exposure to commodities and commodity strategies. Using this approach, the Fund will seek to provide investors with both inflation protection and income.

The Fund intends to invest at least 70% of its net assets in Fixed Income Securities tied to U.S. inflation rates, such as U.S. Treasury Inflation Protected Securities (“TIPS”), as well as inflation-linked Fixed

Advisors ETF Trust, dated April 30, 2009, as revised May 6, 2009; Letter from Josephine Tao to WisdomTree Asset Management, Inc. regarding the WisdomTree Dreyfus Emerging Currency Fund, dated January 7, 2009; Letter from Josephine Tao to WisdomTree Asset Management, Inc. regarding WisdomTree Trust actively managed ETFs, dated May 9, 2008; Letter from James A. Brigagliano to Clifford Chance US LLP regarding PowerShares Actively Managed Exchange Traded Fund Trust, dated April 4, 2008; and Letter from Josephine J. Tao to Foley & Lardner LLP regarding Bear Stearns Active ETF Trust, dated March 24, 2008.

⁶ The Fund was launched on July 14, 2011.

⁷ For these purposes, the term “Fixed Income Securities” includes bonds, notes or other debt obligations, such as government or corporate bonds, denominated in U.S. dollars or non-U.S. currencies.



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Income Securities tied to non-U.S. inflation rates. The Fund's investments outside the United States will focus on inflation-linked securities that are leading exporters of global commodities, such as Australia, Brazil, Canada, Chile, and South Africa. The Fund will not invest more than 35% of its net assets in Fixed Income Securities of issuers in emerging markets. The Fund may invest in Fixed Income Securities that are not linked to inflation, such as U.S. or non-U.S. government bonds, as well as Fixed Income Securities that pay variable or floating rates.

The Fund expects that it will have at least 70% of its assets invested in investment grade securities, and no more than 30% of its assets invested in non-investment grade securities. Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time-to-time in response to economic events and changes to credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated Ba2 or below by Moody's, or equivalently by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser or Sub-Adviser to be of comparable quality.⁸

While the Fund intends to focus its investments in Fixed Income Securities on bonds and other obligations of U.S. and non-U.S. governments and agencies, the Fund may invest up to 20% of its net assets in corporate bonds.⁹ The Fund may invest in securities with effective or final maturities of any length and will seek to keep the average effective duration of its portfolio between 2 and 8 years. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate more than 25% of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or any non-U.S. government or their respective

⁸ In determining whether a security is of "comparable quality," the Adviser or Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

⁹ The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have \$200 million of more par amount outstanding to be considered as an eligible investment. However, the Fund may invest up to 5% of its net assets in corporate bonds with less than \$200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), and (ii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.



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agencies and instrumentalities, or government-sponsored enterprises). Although the Fund intends to invest in a variety of securities and instruments, the Fund will be considered non-diversified, which means that it may invest more of its assets in the securities of a smaller number of issuers than if it were a diversified Fund. In addition, the Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended, and no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund, and the five highest weighted portfolio securities of the Fund (other than U.S. government and non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund.

The Fund intends to invest in Money Market Securities¹⁰ in order to help manage cash flows in an out of the Fund, such as in connection with payment of dividends or expenses and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. All Money Market Securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated Money Market Securities.

The Fund may use derivative instruments as part of its investment strategies. The Fund expects that not more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund's use of derivative instruments will be collateralized or otherwise backed by investments in short-term, high quality U.S. Money Market Securities. The Fund may engage in foreign currency transactions and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit and bankers acceptances denominated in a specified non-U.S. currency. The Fund may also enter into forward currency contracts in order to "lock in" the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.¹¹ In addition, the Fund may invest in the securities of other investment companies (including money market funds and ETFs) and up to an aggregate amount of 15% of its net assets in illiquid securities, including

¹⁰ For these purposes, "Money Market Securities" include: Short-term, high quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

¹¹ The Fund and the Subsidiary (as defined herein) will invest only in currencies, and instruments that provide exposure to such currencies, that have significant foreign exchange turnover and are included in the Bank for International Settlements Triennial Central Bank Survey, December 2007 ("BIS Survey"). Specifically, the Fund and the Subsidiary may invest in currencies and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.



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securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

The Fund intends to have targeted exposure to commodities across a number of sectors, such as energy, precious metals, and agriculture, primarily through its investment in a wholly-owned subsidiary organized in the Cayman Islands ("Subsidiary"). The Subsidiary is wholly-owned and controlled by the Fund, and its investments will be consolidated into the Fund's financial statements. The fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets at the end of each fiscal quarter. The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Subsidiary will comply with the 1940 Act and will have essentially the same compliance policies and procedures as the Fund, except that, unlike the Fund, the Subsidiary may invest without limitation in commodity-linked investments.¹² The Subsidiary will otherwise operate in essentially the same manner as the Fund. Because the Subsidiary's investments are consolidated into the Funds, the Fund's combined holdings (including investments in the Subsidiary) must comply with the 1940 Act.

¹² The Subsidiary will achieve exposure to commodities through investments in a combination of listed commodity futures, commodity index swaps, and structures notes that provide commodity returns. The Subsidiary's investments will be subject to applicable requirements of the Commodity Exchange Act and rules thereunder, and to rules of the applicable U.S. futures exchanges. The Subsidiary's investments in commodity futures contracts will be limited by the application of position limits imposed by the Commodity Futures Trading Commission and U.S. futures exchanges intended to prevent undue influence on prices by a single trader or group of unaffiliated traders. The Subsidiary intends to invest only in listed futures contracts that are heavily traded and are based on some of the world's most liquid and actively-traded commodities. The Subsidiary intends to invest in or have exposure to the following listed futures contracts: Cocoa, coffee, cotton, light cured oil, gold, heating oil, high grade copper, lean hogs, live cattle, natural gas, silver, soybeans, sugar, unleaded gas, and wheat. In addition, the Subsidiary intends to enter into over-the-counter swap transactions only with respect to transactions based on commodities described herein or on major commodity indexes or indicators, such as the S&P GSCI Total Return Index, Dow Jones-UBS Commodity Return Index or the AFT Commodity Trends Indicator. The Subsidiary also may invest in commodity-linked notes, which will be limited to notes providing exposure to the commodities described herein or any commodity index.



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Share Issuance and Redemption

The Fund typically will issue and redeem its Shares only in aggregations of 50,000 Shares or multiples thereof ("Creation Units"), with a minimum market value of approximately \$1,000,000. Shares are not individually redeemable; only Shares combined into Creation Units will be redeemable. The Fund's initial NAV of Shares was established at a level convenient for trading purposes.¹³ Purchasers of Creation Units are able to unbundle the Creation Units into the individual Shares comprising such Creation Unit.

It is not expected that the Fund's Distributor will maintain a secondary market in individual Shares. The Listing Exchange has designated one or more member firms to act as a "Lead Market Maker" responsible for maintaining depth and quality of trading in the Shares. The "Lead Market Maker" has quote and execution obligations and the responsibility for keeping tight spreads in the Shares. The Shares trade on the Listing Exchange in a manner similar to the shares of the Prior ETFs that are listed on the Listing Exchange or another Market.¹⁴

Shares are registered in book-entry form only; the Fund does not issue individual certificates for Shares. The Depository Trust Company ("DTC") serves as securities depository for Shares and DTC or its nominee is the record or registered owner of all outstanding Shares. Beneficial ownership of Shares is shown on the records of DTC or a broker-dealer that is a participant in DTC (a "DTC Participant"). Beneficial owners of Shares ("Beneficial Owners") receive, at the Fund's expense, all of the statements, notices, and reports required under the 1940 Act and other applicable laws ("Required Materials").

The Trust understands that under existing industry practice, in the event the Trust requests any action of Beneficial Owners of Shares, or a Beneficial Owner desires to take any action that DTC, as the record owner of all outstanding Shares, is entitled to take, DTC would authorize the DTC Participants to take such action and that the DTC Participants would authorize the indirect participants and Beneficial Owners acting through such DTC Participants to take such action and would otherwise act upon the instructions of Beneficial Owners owning Shares through them. As described above, the Trust recognizes DTC or its nominee as the record owner of Shares for all purposes.

Accordingly, to exercise any rights of a holder of Shares, each Beneficial Owner must rely upon the procedures of (1) DTC, (2) DTC Participants and (3) brokers, dealers, banks and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly,

¹³ The Trust believes that a convenient trading range is between \$25 - \$100 per Share, and the Trust reserves the right to declare a share split, or a reverse share split, if the trading price over time deviates significantly from such price range. Each shareholder will have one vote per Share.

¹⁴ The Trust expects that the trading of Shares on any other Market would be conducted in a similar manner.



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through which such Beneficial Owner holds its interest. Moreover, because the Trust's records reflect ownership of Shares by DTC only, the Trust will furnish the Required Materials to the DTC Participants who, in turn, will be responsible for distributing them to the Beneficial Owners. This arrangement is identical to that of all Prior ETFs.

Disclosure Documents

The primary disclosure documents with respect to the Shares is the Prospectus for the Fund. As with all investment company securities, the purchase of Shares in Creation Units from any Fund will be accompanied or preceded by a Prospectus.¹⁵

With respect to disclosure in the Prospectus concerning the non-redeemability of Shares, the Trust and the Fund observe the following policies: (1) the term "mutual fund" is not used except to compare and contrast the Trust or the Fund with conventional mutual funds; (2) the term "open-end management investment company" is used in the Prospectus only to the extent required by Form N-1A or other securities law requirements and this phrase is not included on the prospectus cover page or summary; (3) the front cover page of the Prospectus and the prospectus summary includes a distinct paragraph or paragraphs setting forth the fact that Shares are listed on a Market and are individually non-redeemable; (4) the Prospectus discloses that the owners of Shares may acquire those Shares from the Fund, and tender those Shares for redemption to the Fund, only in Creation Units; and (5) the Prospectus clearly discloses that individual Shares prices may be below, above, or at the most recently calculated NAV.

REQUEST FOR RELIEF

The Trust and the Fund request that the Staff grant exemptive relief from Exchange Act Rule 10b-17. As noted above, this requested relief is substantially similar to relief granted to the Prior ETFs currently trading on a Market and to the other series of the Trust.¹⁶

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

¹⁵ The Trust notes that prospectus delivery is not required in certain instances, including purchases of Shares by an investor who has previously been delivered a prospectus (until such prospectus is supplemented or otherwise updated) and unsolicited brokers' transactions in Shares (pursuant to Section 4(4) of the 1933 Act). Also, firms that do incur a prospectus-delivery obligation with respect to Shares will be reminded that under Securities Act Rule 153, a prospectus-delivery obligation under Section 5(b)(2) of the Securities Act owed to a member of the Market in connection with a sale on such Market, is satisfied by the fact that the Prospectus is available at such Market upon request. The Prospectus also will note that the prospectus delivery mechanism provided in Rule 153 is only available with respect to transactions on the Market.

¹⁶ See notes 4 and 5, *supra*.



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with Rule 10b-17(b). Specifically, Rule 10b-17(b)(1)(v)(a-b) requires such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share,¹⁷ and (b) for in-kind distributions, the amount of the security outstanding 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, that 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 Fund.¹⁸ 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 Rule 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.¹⁹

¹⁷ 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 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.

¹⁸ We note that compliance with Rule 10b-17 would be similarly impractical for other ETFs that also continuously create and redeem shares.

¹⁹ 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 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 a record date would increase the chance that the Trust would mis-estimate the number of outstanding shares. This, in turn, would increase the change that the Trust would mis-estimate the per share amount of capital



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The Trust represents that it will comply with the requirements of Rule 10b-17 (other than paragraphs (b)(1)(v)(a-b) thereof). The Trust further represents that as soon as practicable following the end of trading on the Listing Exchange on the day prior to the ex-date (but not later than the last time at which the Listing Exchange accepts such information on such date) with respect to any distribution made by the Fund, the Trust will provide notice to the Listing 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"),²⁰ 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 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 Release²¹ 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 the Adopting Release. The exemption under paragraph (c) of Rule

gains it must distribute.

²⁰ Exchange Act Release No. 9076 (February 17, 1971).

²¹ 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").



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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).

* * * * *

Based on the foregoing, the Trust respectfully requests that the Commission and the Division of Trading and Markets grant the relief requested herein. Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call the undersigned at (202) 778-6422.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jack P. Drogin', with a long horizontal flourish extending to the right.

Jack P. Drogin

Cc: Daniel Staroselsky
Richard F. Morris