



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

April 16, 2012

Jack P. Drogin
Schiff Hardin
1666 K Street NW, Suite 300
Washington, DC 20006

**Re: WisdomTree Emerging Markets Corporate Bond Fund
File No. TP 12-08**

Dear Mr. Drogin:

In your letter dated April 16, 2012, as supplemented by conversations with the staff of the Division of Trading and Markets (“Staff”), you request on behalf of WisdomTree Trust (“Trust”) and WisdomTree Emerging Markets Corporate Bond 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, we find that it is appropriate in the public interest and consistent with the protection of investors to grant, and hereby grant, an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.¹

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

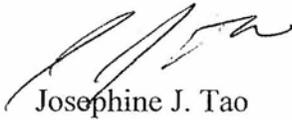
¹ We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Trust. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

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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 Staff 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,²



Josephine J. Tao
Assistant Director

Attachment

² 17 CFR 200.30-3(a) (9).



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Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request of WisdomTree Trust and WisdomTree Emerging Markets Corporate Bond 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 Emerging Markets Corporate Bond 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 approved for listing and trading on The Nasdaq Stock Market, LLC (the “Listing Exchange” or “Nasdaq”), as described herein, pursuant to a proposed rule change by Nasdaq that was approved by the Commission pursuant to Section 19(b) of the Exchange Act. *See* Securities Exchange Act Release No. 66489 (February 29, 2012). In addition, the Commission granted the requested relief to the Trust from the application of certain sections of the 1940 Act 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 Western Asset Management Company (“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. The Bank of New York Mellon is the administrator, custodian and transfer agent for the Fund. 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 Global Real Return Fund dated April 29, 2011; 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

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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 intends to list the Shares on Nasdaq. The Trust intends to offer and sell 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 February 9, 2012.

The Fund seeks to provide a high level of total return consisting of both income and capital appreciation. To achieve its objective, the Fund will invest in debt securities of corporations that are domiciled or economically tied to emerging market countries.⁶

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 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 While there is no universally accepted definition of what constitutes an “emerging market,” in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser look at a variety of commonly-used factors when determining whether a country is an “emerging” market. In general, the Adviser and the Sub-Adviser consider a country to be an emerging market if:

- (1) It is either (a) classified by the World Bank in the lower middle or upper middle income

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The Fund intend to achieve its investment objectives through direct and indirect investments in Corporate and Quasi-Sovereign Debt. For these purposes, Corporate and Quasi-Sovereign Debt includes fixed-income securities of emerging market countries, such as bonds, notes or other debt obligations including loan participation notes (“LPNs”),⁷ as well as other instruments, such as derivative instruments collateralized by Money Market Securities as described below. Quasi-Sovereign Debt, specifically, refers to fixed income securities or debt obligations that are issued by local companies or agencies that may receive financial support or backing from the local government. Under normal circumstances,⁸ the Fund will invest at least 80% of its net assets in Corporate and Quasi-Sovereign Debt that are fixed income securities. Fixed income securities include debt instruments, such as bonds, notes and other obligations denominated in U.S. dollars or local currencies. Fixed income securities include Money Market Securities as defined below. Fixed income securities do not include derivatives.

The Fund intends to provide exposure across several geographic regions and countries. The Fund intends to invest in Corporate and Quasi-Sovereign Debt from the following regions: Asia, Latin America, Eastern Europe, Africa and the Middle East. Within these regions, the Fund is likely to invest in

designation for one of the past five years (*i.e.*, per capita gross national product of less than U.S. \$9,385), (b) has not been a member of the OECD for the past five years, or (c) classified by the World Bank as high income and a member of the OECD in each of the last five years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.*, Korea and Taiwan); and

(2) The country’s debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations.

This definition could be expanded or exceptions made depending on the evolution of market and economic conditions.

⁷ The Fund may invest in LPNs with a minimum outstanding principal amount of \$200 million that the Adviser or Sub-Adviser deems to be liquid. LPNs denominated in U.S. dollars are the predominant form of corporate debt financing in certain emerging markets, particularly in Russia, where they constitute approximately 70% of the corporate debt market (approximately \$40 billion outstanding). In aggregate, LPNs represent over 11% of the JP Morgan Emerging Markets Corporate Bond Index as of November 30, 2011. LPNs are highly liquid instruments that are typically eligible for settlement at Euroclear, Clearstream, or in the U.S. through The Depository Trust Company (“DTC”). Moreover, intra-day quotations in LPNs are generally available from major broker-dealers and data vendors, such as Bloomberg.

⁸ The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events, such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

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countries such as: Argentina, Brazil, Chile, China, Colombia, Hong Kong, India, Indonesia, Israel, Jamaica, Kazakhstan, Malaysia, Mexico, Peru, the Philippines, Poland, Qatar, Russia, Singapore, Saudi Arabia, South Africa, South Korea, Taiwan, Thailand, Trinidad & Tobago, Turkey, Ukraine, the United Arab Emirates, and Venezuela. This list may change, based on market developments. The Fund's credit exposures to any single issuer generally will be limited to 10% of the Fund's assets. The percentage of the Fund's assets in a specific region, country or issuer will change from time to time. The Fund's exposure to any one country will be limited to 30% of the Fund's assets though this percentage may change from time to time in response to economic events and changes in the credit ratings of the Corporate and Quasi-Sovereign Debt of such countries.

The Fund expects that it will have at least 65% of its assets invested in investment grade securities, and no more than 35% 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 15% of its assets in securities rated B 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.⁹

The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. The Fund will only buy performing debt securities and not distressed debt. Generally, a corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than \$200 million par amount outstanding if (1) the Adviser or Sub-Adviser deems such securities 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 or other securities by the issuer), (2) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund, and (3) such investment is deemed consistent with the Fund's goal of providing broad exposure to a broad range of emerging markets countries and issuers.

The Fund may invest in Corporate and Quasi-Sovereign Debt with effective or final maturities of any length. According to the Registration Statement, the Fund will seek to keep the average effective duration

⁹ 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.

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of its portfolio between two and ten years under normal market conditions. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations, and, therefore, more volatile, than a fund with a shorter effective duration. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Corporate and Quasi-Sovereign Debt 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 agencies and instrumentalities, or government-sponsored enterprises). 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. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

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. Under normal circumstances,¹¹ the Fund may invest up to 25% of its net assets in Money Market Securities, although it may exceed this amount where the Adviser or Sub-Adviser deems such investment to be necessary or advisable, due to market conditions. All Money Market Securities acquired by the Fund will be rated investment grade, except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to Money Market Securities rated investment grade.

The Fund may use derivative instruments as part of its investment strategies. Examples of derivative instruments include forward currency contracts,¹² interest rate swaps,¹³ total return swaps,¹⁴ credit-linked

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 See footnote 8, *supra*.

¹² A forward currency contract is an agreement to buy or sell a specific currency on a future date at a price

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notes,¹⁵ and combinations of investments that provide similar exposure to local currency debt, such as investment in U.S. dollar denominated bonds combined with forward currency positions or swaps. If forward currency and swaps position are not being implemented in combination with U.S. dollar denominated bonds, the Fund's use of forward contract and swaps will be combined with investments in short-term, high quality, U.S. money market instruments and will be designed to provide exposure similar to investments in local currency deposits.

The Fund expects that not more than 20% 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. For example, the Fund may engage in swap transactions that provide exposure to corporate debt or interest rates. The Fund may also buy or sell listed currency futures contracts.¹⁶

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures and forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules and interpretations thereof, will "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions.¹⁷

set at the time of the contract.

¹³ An interest rate swap involves the exchange of a floating rate interest payment for a fixed interest rate payment.

¹⁴ A total return swap is an agreement between two parties in which one party agrees to make payments of the total return of a reference asset in return for payments equal to a rate of interest on another reference asset.

¹⁵ A credit-linked note is a type of structured note whose value is linked to an underlying reference asset or entity. Credit linked notes typically provide periodic payments of interest as well as payment of principal upon maturity.

¹⁶ The exchange-listed futures contracts in which the Fund may invest may be listed on exchanges in the U.S., London, Hong Kong, or Singapore. Each of: (1) the United Kingdom's primary financial markets regulator, the Financial Services Authority, (2) Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and (3) Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

¹⁷ See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128

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The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits, and certificates of deposit 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.¹⁸ In addition, the Fund may invest in the securities of other investment companies (including money market funds and ETFs). The Fund may also hold up to 15% of its net assets in (1) illiquid securities; (2) Rule 144A securities; and (3) loan interests (such as loan participations and assignments, but not including LPNs). The Commission staff has interpreted the term “illiquid” in this context to mean a security that cannot be disposed of within seven days in the ordinary course of business at approximately the amount at which the fund has valued a security.¹⁹ The Fund will not invest in any non-U.S. equity securities.

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.²⁰ Purchasers of

(April 27, 1979); Letter from Gerald T. Lins to Stroock & Stroock & Lavan re: Dreyfus Strategic Investing, dated June 22, 1987; and Letter from Edward J. Rubenstein to Shereff, Friedman, Hoffman & Goodman, LLP re: Merrill Lynch Asset Management, L.P., dated July 2, 1996.

¹⁸ The Fund 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 2010 (“BIS Survey”). Specifically, the Fund 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.

¹⁹ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A); Investment Company Act Release No. 1498 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

²⁰ 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

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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 "Designated Liquidity Provider" responsible for maintaining depth and quality of trading in the Shares. The "Designated Liquidity Provider" 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.²¹

Shares are registered in book-entry form only; the Fund does not issue individual certificates for Shares. 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, 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.

from such price range. Each shareholder will have one vote per Share.

²¹ The Trust expects that the trading of Shares on any other Market would be conducted in a similar manner.

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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.²²

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 be 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 Share 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.²³

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) requires such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share,²⁴ and (b) for in-kind

²² 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.

²³ See notes 4 and 5, *supra*.

²⁴ 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

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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.²⁵ 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.²⁶

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

record date.

²⁵ We note that compliance with Rule 10b-17 would be similarly impractical for other ETFs that also continuously create and redeem shares.

²⁶ 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 chance that the Trust would mis-estimate the per share amount of capital gains it must distribute.

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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”),²⁷ 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 Release²⁸ 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 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).

* * * * *

²⁷ Exchange Act Release No. 9076 (February 17, 1971).

²⁸ 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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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 blue ink, appearing to read 'Jack P. Drogin', written over a horizontal line.

Jack P. Drogin

Cc: Bradley Gude
Richard F. Morris