



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

December 3, 2018

P. Georgia Bullitt  
Wilkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099

Re: iShares Preferred Equity Index-Linked Exchange Traded Funds  
File No. TP 19-01

Dear Ms. Bullitt:

In your letter dated December 3, 2018 (the "Letter"),<sup>1</sup> as supplemented by conversations with the staff of the Division of Trading and Markets (the "Staff"), iShares Trust (the "Trust") on behalf of itself, and any national securities exchange on or through which shares ("Shares") of a series fund of the Trust (each, a "Fund") are listed (each, a "Listing Exchange") and/or any other trading market on which Shares may trade (with each such market referred to herein as a "Market"), BlackRock Investments, LLC ("Distributor") and persons or entities engaging in transactions in Shares, including Authorized Participants (as defined in the Letter) and affiliated purchasers of the Funds and Authorized Participants, requests from the Staff, or from the Securities and Exchange Commission (the "Commission"), exemptions from, or interpretive or no-action advice regarding Rule 10b-17(b)(1)(v)(a) and (b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares ("Creation Units").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (the "1940 Act"), as an open-end investment company. The Trust seeks the requested relief with respect to three Funds that are exchange traded funds ("ETFs") and that are managed to track an index (a "Referenced Index") containing (i) preferred securities or (ii) a combination of preferred securities, hybrid securities and/or fixed income securities (together, the "Preferred Funds"). The Preferred Funds include (i) the iShares U.S. Preferred Stock ETF ("PFF"), which was launched on March 26, 2007 and has been operating in compliance with class relief granted by the Staff and the Commission;<sup>2</sup> (ii) the iShares International Preferred Stock ETF ("IPFF"), which was launched on November 15, 2011 and has been operating in

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<sup>1</sup> Each defined term in this letter has the same meaning as defined in the Letter, a copy of which we have attached, unless otherwise noted herein.

<sup>2</sup> Letter from James A. Brigagliano, Acting Assoc. Dir., Div. of Mkt. Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006) ("Equity Class Relief Letter").

compliance with individual relief granted by the Staff and the Commission for such Fund;<sup>3</sup> and (iii) the iShares Inv Grade Preferred and Income Securities ETF (“IGPF”), which is a newly-created series of the Trust and will be managed to track a Referenced Index that is comprised of both preferred securities and fixed income securities. You represent that PFF and IPFF will, as of the date of the Letter, comply with all of the Active ETF Reg. M Conditions. You also represent that IGPF will comply with all of the Active ETF Reg. M Conditions immediately upon issuance.

We are treating your request for relief under Rules 101, to bid for and purchase Shares, and 102 of Regulation M, to allow affiliated purchasers of the Funds and Authorized Participants to purchase Shares for investment purposes and redeem Shares, as a request that the Staff confirm that it will not recommend enforcement action to the Commission if the Trust, Preferred Funds, the applicable Listing Exchanges, other Markets, the Distributor, Authorized Participants, and persons or entities engaging in transactions in the Shares, including affiliated purchasers of the Funds and Authorized Participants, rely on the interpretive guidance for actively managed funds in the Active ETF Relief,<sup>4</sup> provided that the Funds meet the Active ETF Reg. M Conditions, as described in the Letter. In addition, we are treating your request for relief under Rule 10b-17 of the Exchange Act as a request that the Staff confirm that it will not recommend enforcement action to the Commission if the Trust does not satisfy the notice requirements of Rule 10b-17 of the Exchange Act so long as the Trust meets all of the representations and conditions of the Rule 10b-17 Relief for Active ETFs.<sup>5</sup>

Based on the facts and representations set forth in the Letter, and without necessarily agreeing with your analysis, the Staff will not recommend enforcement action to the Commission under Rules 101 and 102 of Regulation M if the Trust, on behalf of itself, the Preferred Funds, the applicable Listing Exchanges, other Markets, the Distributor, Authorized Participants, and persons or entities engaging in transactions in the Shares, including affiliated purchasers of the Funds and Authorized Participants,<sup>6</sup> rely on the interpretive guidance for actively managed funds in the Active ETF Relief, provided that the Fund meets the Active ETF Reg. M Conditions, notwithstanding the fact that the Funds seek to track investment results of specified Referenced Indexes. In addition, notwithstanding the fact that the Funds seek to track the investment results

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<sup>3</sup> Letter from Josephine J. Tao, Assistant Dir., Div. of Mkt. Regulation, to Matthew B. Comstock, Esq., Willkie Farr & Gallagher LLP (Nov. 3, 2011) (“Custom IPFF Letter”).

<sup>4</sup> Frequently Asked Questions About Regulation M, Div. of Mkt. Regulation: Staff Legal Bulletin No. 9 (revised Sept. 10, 2010) (“Active ETF Relief”).

<sup>5</sup> Order Granting a Limited Exemption from Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2), Exchange Act Release No. 67215 (June 19, 2012) (“Rule 10b-17 Relief for Active ETFs”).

<sup>6</sup> For purposes of this no-action position under Rule 102 of Regulation M, such transactions include redemptions and the purchase of Shares for investment purposes by affiliated purchasers of the Preferred Funds.

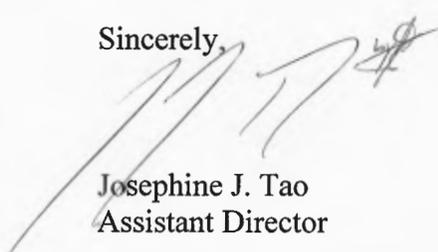
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of specified Referenced Indexes with respect to the Preferred Funds that meet the Active ETF Reg. M Conditions, the Staff would not recommend enforcement action against the Trust under Rule 10b-17 of the Exchange Act, provided that the Trust meets the representations and conditions of the Rule 10b-17 Relief for Active ETFs other than those relating to a Fund's actively managed status.<sup>7</sup>

The foregoing no-action positions taken under Rule 10b-17 of the Exchange Act and Rules 101 and 102 of Regulation M are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to transactions involving shares under the circumstances described above and in the Letter. Any different facts or representations may require a different response. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action positions taken under Rule 10b-17 and Rules 101 and 102 of Regulation M are subject to the condition that such transactions in shares or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

These positions are subject to modification or revocation if, at any time, the Commission or the Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, your attention is directed to the continuing application of the antifraud and anti-manipulation provisions of the Exchange Act, particularly sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each person relying on these positions. The Staff 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.

Sincerely,



Josephine J. Tao  
Assistant Director

Attachment

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<sup>7</sup> We also note that compliance with Rule 10b-17 would be impractical in light of the nature of ETFs because it is not possible for ETFs accurately to project, ten days in advance, what dividend, if any, would be paid on a particular record date.

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Josephine J. Tao  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Request for Exemptive, Interpretive or No-Action Relief from Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and Rule 10b-17 of the Exchange Act for Preferred Equity Index-Linked Exchange Traded Funds

Dear Ms. Tao:

**SUMMARY OF REQUEST FOR RELIEF FOR PREFERRED FUNDS**

We are writing on behalf of iShares Trust (the “**Trust**”), an open-end investment company under the Investment Company Act of 1940 (the “**1940 Act**”). The Trust, on behalf of itself and any national securities exchange on or through which shares (“**Shares**”) of a series fund of the Trust (each, a “**Fund**”) are listed (each, a “**Listing Exchange**”) and/or any other trading market on which the Shares may trade (with each such market referred to herein as a “**Market**”),<sup>1</sup> BlackRock Investments, LLC (the “**Distributor**”) and persons or entities engaging in transactions in Shares, including Authorized Participants (as defined below) and affiliated purchasers of the Funds and Authorized Participants, hereby requests from the staff of the Division of Trading and Markets (“**Staff**”) of the Securities and Exchange Commission (“**Commission**” or “**SEC**”) or from the Commission, as appropriate, exemptions from, or interpretive or no-action advice regarding, Rules 101 and 102 of Regulation M (“**Regulation M**”) of the Exchange Act and Rule 10b-17 under the Exchange Act (“**Reg. M/Rule 10b-17 Relief**”). The Trust seeks the requested relief with respect to three (3) Funds that are exchange traded funds (“**ETFs**”) and that are managed to track an index (a “**Referenced Index**”) containing: (i) preferred securities or (ii) a combination of preferred securities, hybrid securities and/or fixed income securities, (together, the “**Preferred Funds**”).

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<sup>1</sup> In the future, the Trust may determine to list Shares on a Market other than the Listing Exchange. If the Trust lists Shares on a Market other than the Listing Exchange, Shares will be listed in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the 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 Preferred Funds include: (i) the iShares U.S. Preferred Stock ETF (“**PFF**”), which was launched on March 26, 2007 and has been operating in compliance with class relief granted by the Staff and the Commission;<sup>2</sup> (ii) the iShares International Preferred Stock ETF (“**IPFF**”), which was launched on November 15, 2011 and has been operating in compliance with custom relief granted by the Staff and the Commission for such Fund;<sup>3</sup> and (iii) the iShares Inv Grade Preferred and Income Securities ETF (“**IGPF**”), which is a newly-created series of the Trust and will be managed to track a Referenced Index comprised of both preferred securities and fixed income securities.<sup>4</sup> The Preferred Funds seek relief to allow them to rely on the interpretive guidance for actively-managed funds in the Active ETF Relief<sup>5</sup> while, therefore, meeting the Active ETF Reg. M Conditions (as defined below). The Preferred Funds request that the SEC provide them with the flexibility afforded to actively-managed ETFs in lieu of relying on various class relief that is afforded to index-based ETFs (“**Index Based Class Relief**”)<sup>6</sup> and, in particular, the flexibility to operate without having to comply with the ADTV Liquidity Test that is contained in the Equity Class Relief Letter.<sup>7</sup>

IPFF currently relies on the Custom IPFF Letter but, going forward, would like to rely on the Active ETF Relief rather than the Custom IPFF Letter for efficiency reasons so that compliance testing can be carried out in a consistent manner across the various Preferred Funds.

The Preferred Funds propose to comply with the conditions contained within the Staff guidance regarding Regulation M for actively-managed ETFs (the “**Active ETF Reg. M Conditions**”), rather than the Index Based Class Relief.<sup>8</sup> The conditions are as follows: (i) the Shares are issued by a registered open-end investment company; (ii) the Shares are exchange listed and exchange traded; (iii) each Fund continuously redeems the Shares at the Fund’s net asset value (“**NAV**”); (iv) a close alignment between the Shares’ secondary market price and

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<sup>2</sup> Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006) (the “**Equity Class Relief Letter**”).

<sup>3</sup> Letter from Josephine J. Tao, Assistant Director, Division of Market Regulation, to Matthew B. Comstock, Esq., Willkie Farr & Gallagher LLP (November 3, 2011) (the “**Custom IPFF Letter**”).

<sup>4</sup> IGPF will seek to track the investment results of the ICE BofAML Investment Grade Preferred & Hybrid Securities Index. That Referenced Index is designed to reflect the performance of fixed and floating rate, investment-grade U.S. dollar-denominated hybrid debt, preferred stock and convertible preferred stock publicly issued in the U.S.

<sup>5</sup> Frequently Asked Questions About Regulation M, Division of Market Regulation: Staff Legal Bulletin No. 9 (Revised September 10, 2010) (the “**Active ETF Relief**”).

<sup>6</sup> See, Equity Class Relief Letter; Letter from Josephine J. Tao, Assistant Director, Division of Market Regulation, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie Farr & Gallagher LLP (April 9, 2007).

<sup>7</sup> The ADTV Liquidity Test, which is a stated condition for relief granted in the Equity Class Relief Letter, requires that at least 70% of the subject ETF (or 50%, if the ETF has 200 or more component securities) be comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the “actively-traded securities” definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant ETF.

<sup>8</sup> See Active ETF Relief, *supra* note 5.

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such Fund's NAV is expected; (v) on each day the Shares trade, prior to commencement of such trading, such Fund discloses on its website the identities and quantities of the securities and assets held by the Fund which will form the basis of the calculation of the Fund's NAV at the end of such day; (vi) the exchange listing the Shares or other information provider disseminates every 15 seconds through the trading day, through the facilities of the Consolidated Tape Association, an amount representing on a per Share basis the sum of the current value of the securities, assets, and cash required to create new Shares (the intraday indicative value or "IIV");<sup>9</sup> (vii) arbitrageurs are expected to take advantage of price variations between Shares' secondary market price and each Fund's NAV; and (viii) the arbitrage mechanism will be facilitated by the transparency of each Fund's portfolio, the availability of the IIV, the liquidity of each Fund's portfolio securities, the ability to access such securities and the arbitrageurs' ability to create workable hedges.

PFF and IPFF have historically complied with substantially all of the Active ETF Reg. M Conditions (notwithstanding that such Active ETF Reg. M Conditions were not applicable to PFF and IPFF because they operated under separate relief in respect to Reg. M). The one condition that PFF and IPFF did not previously comply with relates to the timing of the publication of the identities and quantities of securities and assets held by the ETF. Instead of complying with the requirement of condition (v) of the Active ETF Reg. M Conditions that such information be published *prior to the commencement of trading* on each day the Shares trade, PFF and IPFF have historically disclosed such information on their website during the trading day. As of the date of this letter, however, PFF and IPFF now disclose on the Trust's website the identities and quantities of the securities and assets held by each of the Preferred Funds *prior to commencement of trading*, as required by condition (v) above. IGPF will comply with all of the Active ETF Reg. M Conditions immediately upon issuance.

In our view, there is no good policy reason why index-based funds that comply with the Active ETF Reg. M Conditions should not be eligible for, and should not have their Authorized Participants and Affiliated Purchasers of the Funds and the Authorized Participants be eligible for, the relief applicable to actively managed ETFs (*i.e.*, the Active ETF Relief) under Rule 101 to bid for and purchase such Shares, and relief under Rule 102 to allow such persons to purchase Shares for investment purposes<sup>10</sup> and redeem Shares. As noted above, the Preferred Funds would satisfy all of the conditions for relief from Rules 101 and 102 of Regulation M set forth in the Active ETF Relief for actively managed ETFs. We note that, in the near future, the Preferred Funds will be subject to even more rigorous liquidity classification and risk management standards as a result of new Rule 22e-4 under the 1940 Act, which goes into effect with respect to many of the requirements on December 1, 2018.<sup>11</sup> In our view, the existing transparency

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<sup>9</sup> The IIV is the sum per Share of the current value of the securities, assets, and cash required to create new Shares.

<sup>10</sup> Such purchases may include Share purchases for investment purposes in connection with Fund seeding trades by affiliates of the Advisor (defined below), at net asset value, through an Authorized Participant. We understand that such trades are not trade reported.

<sup>11</sup> The SEC adopted Rule 22e-4 in October 2016, and many portions of the rule go into effect on December 1, 2018. As a result, as of December 1, 2018, the Preferred Funds will be required to: establish a liquidity risk

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provided by the Preferred Funds coupled with the enhanced focus on liquidity under Rule 22e-4 should facilitate arbitrage activity in the Preferred Funds. We also note that the Preferred Funds, like all ETFs that are registered investment companies, must comply with SEC requirements that limit each Preferred Fund's "illiquid assets" to no more than 15 percent of the Preferred Fund's net assets. For these reasons, we believe that the relief we have requested is warranted.

We also believe that relief is warranted from the disclosure requirements of Rule 10b-17. As noted below, investors in the Preferred Funds will be provided with all information required by Rule 10b-17, albeit on a delayed basis for the sole reason that the Preferred Funds will not have the data earlier.

This Letter is divided into four parts. Part I is a description of the Preferred Funds and the Trust. Part II is a description of the Trust's disclosure documents with respect to its Shares. Part III explains our basis for why the Commission and the Staff should grant the Reg. M/Rule 10b-17 Relief requested for the Preferred Funds. The final part is the Conclusion.

## PART I

### A. The Preferred Funds and the Trust.

The Preferred Funds are or, in the case of IGPF, will be, Funds of the Trust. The Trust was organized as a Delaware statutory trust on December 16, 1999, is authorized to have multiple Funds and currently offers over 200 separate Funds.

Shares of IGPF are expected to be listed on Cboe BZX Exchange, Inc. ("**Cboe BZX**"), Shares of PFF are listed on NASDAQ and Shares of IPFF are listed on NYSE Arca, Inc. Shares of the existing Preferred Funds were listed pursuant to Rule 19b-4(e) and operate in accordance with the applicable rules of their respective Listing Exchanges, and Shares of IGPF are also expected to be listed under Rule 19b-4(e) and operate under the Cboe BZX rules, which include portfolio liquidity and diversification requirements, among other things.

The Trust offers and sells the Shares of PFF and IPFF pursuant to amendments to its Registration Statement (Registration Nos. 811-09729 and 333-92935) on Form N-1A under the 1940 Act and the Securities Act of 1933 ("**1933 Act**") and plans to offer and sell Shares of IGPF pursuant to amendments to the Registration Statement. Amendments to the Registration Statement for PFF and IPFF have been filed with the SEC and are effective, and an amendment to the Registration Statement describing IGPF was filed with the SEC on May 26, 2017 but has not yet become effective.

The Preferred Funds seek to track the investment results of specified Referenced Indexes. All of the Referenced Indexes are licensed from third-party index sponsors and measure the

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management program; adopt policies and procedures for funds that engage in redemptions in-kind; and designate a program administrator.

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performance of select groups of preferred stocks, hybrid securities and/or fixed income securities.<sup>12</sup>

**B. Other Parties.**

**1. Advisor and Sub-Advisor.**

Each Preferred Fund will be advised by BlackRock Fund Advisors (the “**Advisor**”) pursuant to an Investment Advisory Agreement between the Preferred Fund and the Advisor. The Advisor is a California corporation registered as an investment adviser under the Advisers Act. The Advisor has offices located at 400 Howard Street, San Francisco, CA 94105. The Advisor is not affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with any Listing Exchange or other Market.

The Advisor may designate one or more sub-advisors (each, a “**Sub-Advisor**”) for each Preferred Fund. Any Sub-Advisor may be affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with the Advisor but is not expected to be affiliated with any Listing Exchange or any other Market. The Advisor or the Sub-Advisor will choose each Preferred Fund’s portfolio investments and place orders to buy and sell each Preferred Fund’s portfolio investments. BlackRock International Limited acts as Sub-Advisor to IPFF. The Advisor does not intend to designate a Sub-Advisor in respect of the other two Preferred Funds (*i.e.*, PFF and IGPF).

**2. Distributor and Authorized Participants.**

BlackRock Investments, LLC, a broker-dealer registered with the Commission under the Exchange Act and a member of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”), will act as the Distributor and principal underwriter of Shares of the Preferred Funds. The Distributor will distribute Shares on an agency basis. The Distributor is an affiliate (within the meaning of Section 2(a)(3) of the 1940 Act) of the Advisor. The Distributor is not affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with any Listing Exchange or any other Market.

Only entities that have entered into an authorized participant agreement with respect to creation and redemptions of Creation Units (as defined below) (an “**Authorized Participant Agreement**”) with the Distributor (“**Authorized Participants**”) may place orders with the Distributor to purchase or redeem Creation Units, as described below. To be an Authorized Participant, an entity must be (i) a broker-dealer or other participant in the clearing process

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<sup>12</sup> PFF currently seeks to track the investment results of the S&P U.S. Preferred Stock Index, but the Board of Trustees for the Trust (the “**Board**”) has approved a proposal to replace such Referenced Index with another index that is expected to track the performance of fixed rate U.S. dollar denominated hybrid securities, preferred stock and convertible preferred stock publicly issued by corporations in the U.S. domestic market. IPFF currently tracks the S&P International Preferred Stock Index, which measures the performance of a select group of preferred stocks from non-U.S. developed market issuers and traded in non-U.S. developed market exchanges. IGPF expects to track the ICE BofAML Investment Grade Preferred & Hybrid Securities Index, which is designed to reflect the performance of fixed and floating rate, investment-grade U.S. dollar-denominated hybrid debt, preferred stock and convertible preferred stock publicly issued in the U.S.

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through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”), a clearing agency that is registered with the Commission, or a DTC Participant, and (ii) which has executed an Authorized Participant Agreement. Authorized Participants may be, but are not required to be, members of the Listing Exchange. Authorized Participants are not compensated by the Trust or the Preferred Funds in connection with the issuance or redemption of Shares.

The Authorized Participants are not affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with the Advisor or Sub-Advisor or, to the knowledge of the Trust, with the Listing Exchanges or any other Market.

### **3. Administrator/Custodian/Transfer Agent/ Fund Accounting Agent/ Securities Lending Agent.**

The Trust may appoint the Advisor or other service providers to act as administrator (“**Administrator**”), custodian (“**Custodian**”), transfer agent (“**Transfer Agent**”), fund accounting agent (“**Fund Accounting Agent**”) and securities lending agent (“**Securities Lending Agent**”) for the Trust. The identity of the Advisor, Sub-Advisor, Administrator, Custodian, Transfer Agent, Fund Accounting Agent and Securities Lending Agent, as appropriate, will be disclosed in the applicable Preferred Fund’s Prospectus and/or statement of additional information.<sup>13</sup>

### **4. Shares.**

As described below, the Preferred Funds will issue and redeem Shares only in large aggregations of at least 25,000 Shares or more (“**Creation Units**”).<sup>14</sup> Shares will not be individually redeemable; only Shares combined into Creation Units will be redeemable. Purchasers of Creation Units will be able to unbundle the Creation Units into the individual Shares comprising such Creation Unit.

In respect to PFF and IPFF, the Listing Exchange has designated, and in the case of IGPF, the Listing Exchange will designate, one or more member firms to act as a “**Lead Market Maker**” and to maintain depth and quality of trading in the Shares.

Shares will be registered in book-entry form only; the Preferred Funds will not issue individual certificates for Shares. The Depository Trust Company (“**DTC**”) will serve as securities depository for Shares, and DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be 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**”) will receive, at the relevant Preferred Fund’s expense, all of the

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<sup>13</sup> The term “**Prospectus**” refers to the applicable Preferred Fund’s prospectus contained in the then-existing registration statement, as filed with the Commission. Such registration statement will also contain the Preferred Fund’s statement of additional information.

<sup>14</sup> PFF and IPFF have Creation Units of 50,000 Shares, and IGPF is expected to have a Creation Unit of 50,000 Shares.

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statements, notices, and reports required under the 1940 Act, the CEA and other applicable laws (“**Required Materials**”).

### **C. Purchasing Shares.**

The Trust will offer, issue and sell Shares of the Preferred Funds in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV of each Preferred Fund is expected to be determined generally as of the close of the regular trading session on the New York Stock Exchange (“**NYSE**”) (ordinarily 4:00 p.m. Eastern Time), on each day that the NYSE is open for business. The Trust will sell and redeem Creation Units of the Preferred Funds on every day on which the Listing Exchange on which the Preferred Fund is listed for trading is open for business and will not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption for more than seven days, other than (a) any period during which the Listing Exchange is closed other than customary weekend and holiday closings, (b) any period during which trading on the Listing Exchange is suspended or restricted, (c) any period during which an emergency exists as a result of which disposal by the Trust of securities or instruments owned by it is not reasonably practicable or it is not reasonably practicable for the Trust to determine the value of its net assets, and (d) under such other circumstances as is permitted by the Commission.

Each Preferred Fund will always have a fixed number of Shares in a Creation Unit as specified in the Prospectus for such Preferred Fund, which will not be less than 25,000.<sup>15</sup>

As discussed above, individual Shares will be listed on the Listing Exchange (or another Market) and traded in the secondary market in the same manner as other equity securities currently listed and trading on a Market. The price of Shares trading in the secondary market will be based on a current bid/offer market. No secondary sales will be made to brokers or dealers at a concession by the Distributor or by any Preferred Fund. Transactions involving the sale of Shares in the secondary market—which will be between purchasers and sellers and will not involve the Preferred Funds—will be subject to customary brokerage commissions, markups and other charges. The price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at NAV, which should reduce the likelihood that Shares would trade at a material premium or discount in relation to their NAV.

Redemptions of Shares of the Preferred Fund, which may only be made in Creation Units, will be made by the Trust in a similar manner as creations of Shares, but the process is reversed. Shares may only be directly purchased, or redeemed, by or through an Authorized Participant.

### **D. Procedures Applicable To Purchases of Preferred Funds.**

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<sup>15</sup> PFF and IPFF currently have Creation Units of 50,000 Shares, and IGPF is expected to have a Creation Unit size of 50,000 Shares. Assuming a Creation Unit of 50,000 Shares and \$25 per Share price for a Preferred Fund as of the first day of trading on the Listing Exchange, the Creation Unit value on such day would be \$1,250,000.

## 1. Deposits of Assets and/or Securities.

Creations of Shares of the Preferred Funds will generally be effected on an in-kind basis.<sup>16</sup> To purchase Shares directly from the applicable Preferred Fund, an Authorized Participant must deposit with such Preferred Fund an in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (“**Deposit Securities**”) and a specified amount of cash (the “**Cash Component**”). On each day the Listing Exchange is open for business, prior to the opening of trading on the Listing Exchange, the Advisor or the relevant Sub-Advisor will make available through the NSCC the required Deposit Securities and Cash Component. Deposit Securities are selected by each Preferred Fund based on the portfolio securities (the “**Portfolio Securities**”) held by the Preferred Fund or the index components of the Referenced Index. Portfolio Securities may consist of convertible and non-convertible preferred securities, hybrid securities, and cash and cash equivalent instruments (as defined by the rules of the applicable Listing Exchange). The Portfolio Securities eligible for inclusion in the Referenced Indexes underlying the Preferred Funds include securities issued by companies domiciled in the U.S. and in non-U.S. developed markets. The Referenced Indexes may include securities offered pursuant to Rule 144A under the 1933 Act.

## 2. Placement of Purchase Orders.

As mentioned above, all purchase orders for Shares in Creation Units of the Preferred Funds must be placed by or through an Authorized Participant. A purchase order must be received by the Distributor prior to a Fund’s purchase cut-off time in order to receive that day’s NAV per Share.

Purchases of Creation Units of Shares of the Preferred Funds by an Authorized Participant will be made in accordance with the terms of the Prospectus for each Preferred Fund and generally will settle no later than the second (2nd) Business Day<sup>17</sup> following the trade date (generally expressed as “**T+2**”).<sup>18</sup> The Preferred Funds reserve the right to settle Creation Unit transactions on a basis other than T+2, including a shorter settlement period, if necessary or appropriate under the circumstances and compliant with applicable law and the Fund’s Prospectus and/or statement of additional information.

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<sup>16</sup> The Preferred Funds and each other Fund also reserve the right to authorize purchases of Creation Units either partially for cash or solely for cash.

<sup>17</sup> The term “**Business Day**” refers to each day that a Preferred Fund is open for business, including as required by Section 22(e) of the 1940 Act.

<sup>18</sup> To the extent that the standard date for the delivery and settlement of Portfolio Instruments is shortened from T+2 to T+1 or T, the Trust expects that the time for the delivery and settlement of purchases or redemptions of Creation Units of Shares of a Preferred Fund by an Authorized Participant may be similarly shortened, consistent with disclosure for the Preferred Fund in its Prospectus and/or statement of additional information.

### **3. Transaction Fee on Purchases of Creation Units.**

The Trust may impose transaction fees (“**Transaction Fees**”)<sup>19</sup> in connection with the purchase of Creation Units, as disclosed in the Prospectus and/or statement of additional information for each Preferred Fund.

#### **E. Procedures Applicable To Redemptions of the Preferred Funds.**

##### **1. Redemption Proceeds.**

The payment upon redemption (“**Redemption Payment**”) of a Creation Unit generally will consist of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (“**Redemption Securities**”) plus an amount of cash equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a redemption request in proper form, and the NAV of such Preferred Fund, less a redemption Transaction Fee, as further described in the Prospectus for the applicable Preferred Fund.<sup>20</sup>

The Advisor or Sub-Advisor will make the composition of the Redemption Payment available through NSCC, DTC or the Distributor.

##### **2. Placement of Redemption Orders.**

In order to redeem Shares in Creation Units of the Preferred Funds, Shares equal to a Creation Unit must be delivered by an Authorized Participant; investors other than Authorized Participants are responsible for making arrangements for a redemption request to be made through an Authorized Participant. An order to redeem Shares in Creation Unit(s) of the Preferred Funds is deemed received by the Trust if: (i) an Authorized Participant has transferred or caused to be transferred to the Preferred Fund’s transfer agent the Creation Unit redeemed through the book-entry system of DTC in such manner and as of such time provided in the handbook for Authorized Participants; (ii) a request in form satisfactory to the Preferred Fund is received by the Distributor or its agent from the Authorized Participant on behalf of itself or another redeeming investor by the order cut-off time; and (iii) all other procedures set forth in the Authorized Participant Agreement are properly followed. Deliveries of redemption proceeds to redeeming Authorized Participants generally will be made within two (2) Business Days. The Preferred Funds reserve the right to settle redemption transactions on a basis other than T+2, including a shorter settlement period, if necessary or appropriate under the circumstances and compliant with applicable law and the disclosure set forth in the Preferred Fund’s Prospectus and/or statement of additional information.

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<sup>19</sup> If a purchase consists solely or partially of cash, such Transaction Fees may include certain brokerage, tax, foreign exchange, execution, price movement and other costs and expenses related to the execution of trades resulting from such transaction (which may, in certain circumstances, be based on a good faith estimate of transaction costs).

<sup>20</sup> The Preferred Funds also reserve the right to redeem Creation Units either partially for cash or solely for cash.

Because securities held by the Preferred Funds may trade on days that the Listing Exchange for the Preferred Fund is closed or that are otherwise not Business Days for such Preferred Fund, Authorized Participants may not be able to redeem Shares of such Preferred Fund, or to purchase and sell Shares of such Preferred Fund on the Listing Exchange for such Preferred Fund, on days when the NAV of such Fund could be significantly affected by events in the relevant foreign markets.

### **3. Transaction Fee on Redemption of Creation Units.**

The Trust may impose Transaction Fees<sup>21</sup> in connection with the redemption of Creation Units of the Preferred Funds as disclosed in the applicable Preferred Fund's Prospectus and/or statement of additional information.

### **F. Potential Investors.**

The Advisor expects that secondary market purchasers of Shares of the Preferred Funds will include both institutional and retail investors.

## **PART II**

### **A. Disclosure Documents.**

The primary disclosure document with respect to the Shares for the Preferred Funds will be the Prospectus for such Preferred Fund. As with all investment company securities, the purchase of Shares in Creation Units from the Preferred Funds will be accompanied or preceded by a Prospectus, subject to a change in applicable law.

With respect to disclosure in the Prospectus concerning the non-redeemability of Shares, the Preferred Funds will observe the following policies: (1) no Preferred Fund marketing materials (other than as required in the Preferred Fund's Prospectus) will reference an "open-end fund" or "mutual fund," except to compare and contrast a Preferred Fund with conventional mutual funds; (2) in all marketing materials where the features or method of obtaining, buying or selling Shares traded on the Listing Exchange are described, there will be an appropriate statement or statements to the effect that Shares are not individually redeemable; (3) the Preferred Funds will not be advertised or marketed as open-end investment companies, *i.e.*, as mutual funds, which offer individually redeemable securities; and (4) any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that only owners of Shares who are Authorized Participants may acquire Shares from the Preferred Funds and tender those Shares for redemption to such Preferred Funds and any such purchase or redemption by such Authorized Participant must be in Creation Units only.

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<sup>21</sup> If a redemption consists solely or partially of cash, such Transaction Fees may include certain brokerage, tax, foreign exchange, execution, price movement and other costs and expenses related to the execution of trades resulting from such transaction (which may, in certain circumstances, be based on a good faith estimate of transaction costs).

The Distributor will coordinate the production and distribution of the Prospectus to broker-dealers. It will be the responsibility of the broker-dealers to ensure that a Prospectus is provided to each secondary market purchaser of Shares to the extent required by applicable law.

**B. Website.**

The portfolio holdings of the Preferred Funds will be disclosed on the public website of the Trust.<sup>22</sup> The Trust's agent will calculate the IIV (as discussed above) for each Fund. The IIV will be disseminated by the Listing Exchange.

**C. Dissemination of Information about the Portfolio Securities Held by the Preferred Funds.**

The prices of the Portfolio Securities held by each of the Preferred Funds will be readily available from, as applicable, automated quotation systems, public sources, such as newspapers and other publications, and from a variety of on-line information services, such as Bloomberg or Reuters, and other pricing services.

**D. Compliance with Active ETF Reg. M Conditions.**

The Preferred Funds, although index-based, will operate in a manner that is consistent with the Active ETF Reg. M Conditions. Specifically, similar to actively-managed ETFs, each of the following is or will be true of the Preferred Funds:

- (i) the Shares are issued by a registered open-end investment company;
- (ii) the Shares are exchange listed and exchange traded;
- (iii) each Fund continuously redeems the Shares at the Fund's NAV;
- (iv) a close alignment between the Shares' secondary market price and such Fund's NAV is expected;
- (v) on each day the Shares trade, prior to commencement of such trading, such Fund discloses on its website the identities and quantities of the securities and assets held by the Fund which will form the basis of the calculation of the Fund's NAV at the end of such day;
- (vi) the exchange listing the Shares or other information provider disseminates every 15 seconds through the trading day, through the facilities of the Consolidated Tape Association, the Fund's IIV;

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<sup>22</sup> The Trust will comply with its obligations, imposed by recent amendments to Form N-1A, to disclose in its policies and procedures with respect to the disclosure of its portfolio holdings and to include in its Prospectus and/or statement of additional information a description of each Preferred Fund's policies and procedures. *See* Release No. IC-26418.

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- (vii) arbitrageurs are expected to take advantage of price variations between Shares' secondary market price and each Fund's NAV; and
- (viii) the arbitrage mechanism will be facilitated by the transparency of each Fund's portfolio, the availability of the IIV, the liquidity of each Fund's portfolio securities, the ability to access such securities and the arbitrageurs' ability to create workable hedges.

The Preferred Funds believe that, even though they are index based ETFs, there is no reason that they should not be eligible for, and should not have their Authorized Participants and Affiliated Purchasers of the Funds and Authorized Participants be eligible for, the relief applicable to actively managed ETFs (*i.e.*, the Active ETF Relief). As noted above, the Preferred Funds would satisfy all of the conditions for relief from Rules 101 and 102 of Regulation M set forth in the Active ETF Relief for actively managed ETFs. Because the Preferred Funds also satisfy the conditions provided to actively managed ETFs seeking Rule 10b-17 relief, the Preferred Funds believe they should be allowed to rely on the Rule 10b-17 relief granted to actively managed ETFs.

### **PART III**

#### **A. Requests For Relief**

The Trust, on behalf of itself, the Preferred Funds, the applicable Listing Exchanges, other Markets, the Distributor, Authorized Participants and persons or entities engaging in transactions in the Shares, requests that the Commission and its Staff grant exemptive, interpretive or no-action relief from Rules 101 and 102 of Regulation M and Rule 10b-17 under the Exchange Act to allow the Preferred Funds to operate and trade in accordance with the exemptive relief described in this Request for Relief.

##### **1. Rule 101 of Regulation M.**

Subject to certain enumerated exceptions, Rule 101 prohibits a "distribution participant," in connection with a distribution of securities, from bidding for or purchasing or from attempting to induce any person to bid for or purchase, a "covered security" during the applicable restricted period. "Distribution participant" is defined in Rule 100(b) of Regulation M to include an underwriter or prospective underwriter in a particular distribution of securities, or any broker, dealer or other person who has agreed to participate or is participating in such distribution. Rule 100(b) of Regulation M defines "distribution," for purposes of the Rule, as an offering of securities, whether or not subject to registration under the 1933 Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

We understand that while broker-dealers that tender Deposit Securities to the Trust through the Distributor in return for Creation Unit(s) of Shares generally will not be part of a syndicate or selling group, and no broker-dealer will receive fees, commission or other remuneration from the Trust or the Distributor for the sale of Creation Units, under certain

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circumstances they could be deemed to be an “underwriter” or “distribution participant,” as those terms are defined in Rule 100(b).

The Trust respectfully requests that the Commission or Staff grant exemptive, interpretive or no-action relief from Rule 101 to permit persons participating in a distribution of Shares to rely on the interpretive guidance for actively managed funds in the Active ETF Relief, provided that the Preferred Funds meet the Active ETF Reg. M Conditions, as described above.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Because each Preferred Fund’s NAV is generally determined based on the market values of its portfolio securities, and purchases or sales of Shares in the secondary market generally occur at negotiated prices that reflect the underlying portfolio value, as generally represented by the NAV, creation or redemption of Shares should not have a significant impact on the NAV, or the market value of Shares. Rather, the ability to create and redeem Shares each Business Day, combined with the arbitrage and market making mechanisms of market participants, should work to keep the market prices of Shares, and the NAV of such Shares, closely aligned.

The Trust also respectfully requests relief from the provisions of Rule 101 to the extent necessary to permit persons or entities that may be deemed to be participating in the distribution of the Shares or a Component Security of each Preferred Fund to tender Shares for redemption in Creation Unit size aggregations and to receive as part of the redemption proceeds the Redemption Securities of the Preferred Fund, in reliance on the interpretive guidance for actively managed funds in the Active ETF Relief, provided that the Preferred Funds meet the Active ETF Reg. M Conditions.

In view of the lack of any special financial incentive to create Creation Unit size aggregations of the Shares, combined with a predictable lack of any meaningful potential for the issuance and the secondary market trading of the Shares to affect significantly Share pricing, application of Rule 101 to a broker-dealer or other person who may be participating in a distribution or to broker-dealers or other persons in respect of their creation and redemption activities and their day-to-day ordinary business of buying and selling securities and the Shares, may, in each case, undermine the potential beneficial market effect of Share trading.

For the reasons set forth above, the Trust requests that the Commission or Staff grant exemptive, interpretive or no-action relief under Rule 101 to allow the Trust, Preferred Funds, the applicable Listing Exchanges, other Markets, the Distributor, Authorized Participants, and persons or entities engaging in transactions in the Shares to rely on the interpretive guidance for actively managed funds in the Active ETF Relief, provided that the Preferred Funds meet the Active ETF Reg. M Conditions, as described above.

## **2. Rule 102 of Regulation M**

The Trust also requests that the Commission or Staff confirm that it will not recommend enforcement action to the Commission under Rule 102 of Regulation M if the Trust and selling security holders of the Preferred Funds as well as their “affiliated purchasers” (as defined in Rule

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100 of Regulation M) rely on the interpretive guidance for actively managed funds in the Active ETF Relief to redeem Shares and to bid for and purchase Shares for investment purposes,<sup>23</sup> provided that the Preferred Funds meet the Active ETF Reg. M Conditions, as described above. Accordingly, we are requesting, under this no-action position, that the shares of the Preferred Funds be exempt from Rule 102 of Regulation M on the basis of the exception contained in subsection (d)(4) of such Rule, consistent with the interpretive guidance for actively managed funds in the Active ETF Relief and for affiliated purchasers to purchase Shares for investment purposes.

Rule 102 is intended to prevent persons from manipulating the price of a security during a distribution and to protect the integrity of the offering process by prohibiting activities that could artificially influence the market for that particular security. Redemption transactions and, we respectfully submit, secondary market transactions in Shares for an investment purpose are not viable means to manipulate the price of a Component Security during a distribution of such security. The Trust will redeem the Creation Unit size aggregations of Shares at the NAV of the Shares. Although the Shares will be traded on the secondary market, the Shares may only be redeemed in Creation Unit size aggregations and will be purchased by affiliated purchasers of the Preferred Funds only for an investment purpose.<sup>24</sup> The Trust believes that the redemption by the Trust of the Shares at their NAV in consideration principally for Redemption Securities and purchases in the market by affiliated purchasers for an investment purpose do not involve the abuses that Rule 102 was intended to prevent.

For the reasons set forth above, the Trust requests that the Commission or the Staff confirm that it will not recommend enforcement action to the Commission under Rule 102 of Regulation M if the Trust, selling security holders and affiliated purchasers of the Preferred Funds rely on the interpretive guidance for actively managed funds in the Active ETF Relief to engage in transactions in the Shares, as described above, provided that the Preferred Funds meet the Active ETF Reg. M Conditions, as described above.

### **3. Rule 10b-17**

The Trust seeks relief from specified provisions of Rule 10b-17 under the Exchange Act. Rule 10b-17 requires an issuer of a class of publicly traded securities to give notice of certain actions (*e.g.*, dividends, stock splits, rights offerings) relating to the class of securities. At issue with respect to the Preferred Funds are subparagraphs (b)(1)(v)(a)-(b) of Rule 10b-17. Those subparagraphs generally require an issuer to provide ten (10) days advance notice of, in regard to (a) cash distributions, the amount of cash to be paid or distributed per share,<sup>25</sup> and (b) in-kind

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<sup>23</sup> See Footnote 10 above.

<sup>24</sup> Transactions in the Shares or any related securities will not be made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

<sup>25</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 that 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.

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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 Shares may be purchased and redeemed from the Preferred Fund only in Creation Unit aggregations and are listed for individual trading on a national securities exchange, the Preferred Funds are generally intended to operate like other open-end funds continuously offering their shares. In recognition of the foregoing, the Commission issued an order permitting the Trust to issue Shares with limited redeemability.

Compliance with Rule 10b-17(b)(1)(v)(a)-(b) would be impractical in light of the nature of the Preferred Funds. Specifically, because the number of Shares outstanding may increase or decrease on each business day, it is not possible for the Trust to project accurately, 10 days in advance, what dividend would be paid on a particular record date. Applying the timing requirements of Rule 10b-17(b)(1)(v)(a)-(b) to the Trust, therefore, would subject the Trust to the risk of inaccurately calculating the amount of any such dividend.

The Trust represents that it will comply with the requirements of Rule 10b-17, other than subparagraphs (b)(1)(v)(a) and (b) thereof. The Trust further represents that, as soon as practicable following the end of trading on the applicable 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 Preferred Funds, the Trust will provide notice to the Exchange containing the information required in Rule 10b-17(b)(1)(v)(a)-(b).

In the release proposing Rule 10b-17 (the “**Proposing Release**”),<sup>26</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 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.

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<sup>26</sup> Exchange Act Release No. 9076 (Feb. 17, 1971).

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We respectfully submit that none of these concerns raised by the Commission in the Proposing Release<sup>27</sup> will be implicated if the requested relief is granted. As set out 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). Consequently, market participants will receive timely notification of the existence and timing of a pending distribution, and will be able to plan their transactions in Shares accordingly. As a result, there should be no confusion or opportunity for manipulation regarding parties' rights to receive distributions, which concerns led 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.

On June 19, 2012 the Commission, via delegated authority to the Division of Trading and Markets, issued an exemptive order granting a limited exemption from Rule 10b-17 to certain actively managed ETFs pursuant to Rule 10b-17(b)(2).<sup>28</sup> The Rule 10b-17 Relief for Actively Managed ETFs specifically states:

We find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rule 10b-17 to any issuer of an actively managed ETF including the Trust. Specifically, other than receiving a delayed notice of the cash distributed and the shares outstanding, market participants will receive timely notification of the existence and timing of a pending distribution as the Fund will comply with all other requirements of Rule 10b-17. Further, the provision of the information required under Rule 10b-17(b)(1)(v)(a) and (b) the day before ex-dividend date should allow market participants time to update their systems to reflect the accurate price once trading begins on the ex-dividend date.

The Rule 10b-17 Relief for Actively Managed ETFs also notes that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of such ETFs. This is because it is not possible for these ETFs to accurately project ten days in advance the composition of the dividend that would be paid on a particular record date. Although the Preferred Funds are managed to a Referenced Index rather than being actively managed, all of the stated reasons in the Rule 10b-17 Relief for Actively Managed ETFs for granting such relief apply to the Preferred Funds.

For the reasons set forth above, the Trust requests that the Commission or the Staff confirm that it will not recommend enforcement action to the Commission if the Trust does not

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<sup>27</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**").

<sup>28</sup> Order Granting a Limited Exemption from Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2), Exchange Act Release No. 67215 (June 19, 2012) ("**Rule 10b-17 Relief for Actively Managed ETFs**").

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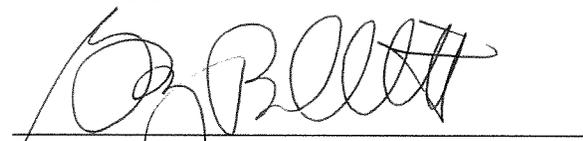
satisfy the notice requirements of Rule 10b-17 under the Exchange Act so long as all of the conditions<sup>29</sup> that are contained within the Rule 10b-17 Relief for Active ETFs are met.

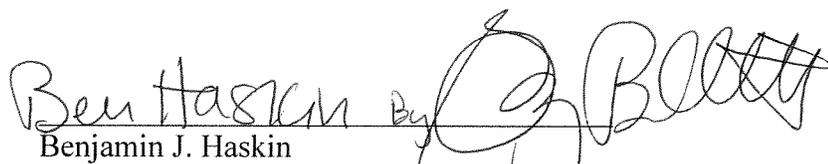
### CONCLUSION

Based on the foregoing, the Trust respectfully requests that the Commission and the Division of Market Regulation grant the Reg. M/Rule 10b-17 Relief requested herein. The forms of relief requested are similar to those granted by the Commission and Staff in similar circumstances.

Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call Georgia Bullitt at (212) 728-8250 or Ben Haskin at 202-303-1124.

Very truly yours,

  
\_\_\_\_\_  
P. Georgia Bullitt  
Partner  
Willkie Farr & Gallagher LLP

  
\_\_\_\_\_  
Benjamin J. Haskin  
Partner  
Willkie Farr & Gallagher LLP

cc: Deepa Damre, BlackRock Fund Advisors  
Adithya Attawar, BlackRock Fund Advisors  
Michael DeNiro, Willkie Farr & Gallagher LLP

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<sup>29</sup> The Rule 10b-17 Relief for Actively Managed ETFs contain the following conditions: The issuer must comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and the issuer must provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the national securities exchange upon which shares of the ETF are registered pursuant to Section 12 of the Exchange Act as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when such exchange last accepts information relating to distributions on the day before the ex-dividend date.