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Ms. Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request of Fidelity Covington Trust for Exemptive, Interpretive and/or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rules 10b-10, 15c1-5, and 15c1-6 under the Exchange Act for Certain Active ETFs

Dear Ms. Russell:

SUMMARY OF REQUEST FOR RELIEF

I am writing on behalf of Fidelity Covington Trust (the “Trust”), with respect to the Initial Funds (defined below), each a series of the Trust, and any additional series of the Trust as well as other existing or future open-end management investment companies or series thereof, in each case that operate as described herein (“Future Funds,” and together with the Initial Funds, the “Funds”).¹ The Trust, on behalf of itself and any national securities exchange or national securities association on or through which shares of the Funds (“Shares”) are listed (each, a “Listing Exchange”) and/or may subsequently trade (with each such market referred to herein as a “Market”),² Fidelity Distributors Company LLC (“Distributor”) and persons or entities engaging in transactions in Shares, including Authorized Participants (as defined below), hereby request, as applicable, from the staff of the Division of Trading and Markets (“Staff”) of the Securities and Exchange Commission (“Commission” or “SEC”), or from the Commission, exemptive, interpretive or no-action advice or relief regarding Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, and 15c1-6 under the Exchange Act.

¹ The Initial Funds will be advised by Fidelity Management & Research Company LLC (“FMR”) or an entity controlling, controlled by, or under common control with FMR (FMR and each such other entity and any successor thereto included in the term “Adviser”). The Adviser or an affiliate thereof may enter into license agreements with registered investment advisers advising open-end registered investment companies or series thereof not advised by the Adviser that intend to launch series that operate as described herein (“Licensed Funds”). The term “Future Funds” as used herein includes Licensed Funds in addition to other Funds advised by the Adviser.

² 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 Section 19(b) of the Exchange Act.

The Trust is registered with the Commission as an open-end investment management company under the Investment Company Act of 1940, as amended (the “1940 Act”).³ Each Fund will operate as an actively managed exchange-traded fund (“ETF”).

On September 25, 2019, the Commission issued an exemptive order granting relief substantially identical to that requested herein to ETFs (including actively managed ETFs) eligible to rely on Rule 6c-11 under 1940 Act (“6c-11 ETFs”),⁴ subject to certain conditions (“Order”).⁵

The Funds will operate in a manner similar to 6c-11 ETFs. The principal difference between the Funds and 6c-11 ETFs is that the Funds will not publicly disclose their complete portfolio holdings on a daily basis.⁶ Instead, the Funds will provide other information that the Trust and Adviser believe is sufficient on its own to enable market participants’ intraday arbitrage in Shares, including hedging their positions in Shares.

As discussed in further detail below, on any day the Trust is open, including any day when the Trust satisfies redemption requests as required by Section 22(e) of the 1940 Act (“Business Day”), before commencement of trading of Shares, each Fund will publish on its website: (1) a basket of securities and cash that is designed to closely track the daily performance of the Fund (“Tracking Basket”),⁷ and (2) the

³ See Fidelity Beach Street Trust, *et al.*, Investment Company Act Release Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order) and related application.

⁴ See Rule 6c-11 under the 1940 Act (effective Dec. 23, 2019); Exchange-Traded Funds, SEC Rel. No. IC-33646 (Sept. 25, 2019) (adopting Rule 6c-11) (“Rule 6c-11 Adopting Release”).

⁵ See Order granting a conditional exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 for Certain Exchange-Traded Funds, SEC Rel. No. 34-87110 (Sept. 25, 2019). Prior to the SEC’s adoption of Rule 6c-11 and issuance of the Order, the Staff had granted substantially identical relief to other ETFs (including actively managed ETFs), subject to certain conditions. See *e.g.*, Letter from the Commission, by the Division of Market Regulation, pursuant to delegated authority, by Catherine McGuire, Chief Counsel, to Securities Industry Association, dated Nov. 21, 2005 (“SIA Letter”); Letter from Josephine Tao to WisdomTree Trust, dated May 9, 2008 (“WisdomTree Letter”); Letter from Joanne Rutkowski, Assistant Chief Counsel, to Willkie Farr & Gallagher LLP, dated May 29, 2018.

⁶ Because FMR is an active manager that uses proprietary research and expertise to manage client portfolios, FMR has determined that, in many circumstances, it may not be appropriate for it to make its portfolios or strategies “transparent.” By revealing holdings daily, Active ETFs risk signaling to the market their investment intent with respect to certain securities, leading other market participants to “front run” and trade and establish sizable positions in anticipation of activity.

⁷ The Tracking Basket will be comprised of: (i) select recently disclosed portfolio holdings (“Strategy Components”); (ii) liquid U.S. exchange-traded ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests (“Representative ETFs”); and (iii) cash and cash equivalents. The Tracking Basket will be constructed utilizing a mathematical optimization process to minimize deviations in the daily returns of the Tracking Basket relative to the daily returns of the Fund. Given that the Tracking Basket would normally serve as a Fund’s Creation Basket (as defined below), a Fund may acquire Representative ETFs to create or redeem Shares.

The Tracking Basket published on the Fund’s website each Business Day will include the following information for each portfolio holding in the Tracking Basket: (1) ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Tracking Basket.

percentage weight overlap between the holdings of the prior Business Day's Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of net asset value ("NAV") at the end of the prior Business Day ("Tracking Basket Weight Overlap").⁸ As discussed in further detail below, the Trust and the Adviser believe that these disclosures will provide arbitrageurs⁹ with adequate information to estimate the value of and hedge positions in a Fund's Shares, which will facilitate the arbitrage process that permits the shares of an ETF to trade at market prices that are at or close to NAV. Accordingly, the Trust does not believe that the relief requested raises any significant new regulatory issues.

The Trust hereby requests, as applicable, exemptive, interpretive or no-action advice or relief regarding Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, and 15c1-6 under the Exchange Act.

This Letter is divided into five parts. Part I is a description of the Trust and the Funds. Part II contains a discussion of the dissemination of information regarding the Funds. Part III is a comparison of the Funds and 6c-11 ETFs. Part IV contains the requests for relief. Part V is the conclusion.

PART I

A. The Trust and the Funds

The Trust was organized as a Massachusetts business trust on May 10, 1995. The Trust is registered with the Commission as an open-end management investment company under the 1940 Act. The Trust will offer and sell Shares of the Funds pursuant to a registration statement on Form N-1A, as amended, filed with the Commission under the Securities Act of 1933, as amended (the "Securities Act"), and the 1940 Act. The Trust is overseen by a board of trustees (the "Board") which maintains the composition requirements of Section 10 of the 1940 Act.

Each Fund will adopt fundamental policies consistent with the 1940 Act and be classified as "diversified" or "non-diversified" under the 1940 Act. Each Fund intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the diversification requirements applicable to a regulated investment company in the Internal Revenue Code ("IRC") Sec. 851(b)(3)(B), 26 U.S.C. 851(b)(3)(B) (the "IRC diversification requirement").

The Initial Funds are the Fidelity New Millennium ETF, Fidelity Blue Chip Growth ETF, and Fidelity Blue Chip Value ETF. Each Initial Fund seeks long-term growth of capital.

- (i) With respect to the Fidelity New Millennium ETF, the Adviser normally invests the Fund's assets primarily in equity securities. The Adviser seeks to identify early signs of long-term changes in the marketplace and to focus on those companies that may benefit from opportunities created by these changes. The Adviser also examines technological advances, product innovation, economic plans, demographics, social attitudes, and other factors to identify companies that are innovating in their industry and growing market share. The Adviser favors companies that show potential for stronger-than-expected earnings or

⁸ The Fund's website will note that the Tracking Basket Weight Overlap is calculated based on the Tracking Basket and portfolio holdings as of the prior Business Day.

⁹ As used herein, "arbitrageurs" include market makers, Authorized Participants, and other arbitrageurs.

growth and industries that are undervalued or out-of-favor. The Fund's strategy can lead to investments in small and medium-sized companies. The Adviser may invest the Fund's assets in securities of foreign issuers in addition to securities of domestic issuers. The Adviser is not constrained by any particular investment style. At any given time, the Adviser may tend to buy "growth" stocks or "value" stocks, or a combination of both types.

- (ii) With respect to each of the Fidelity Blue Chip Growth ETF and the Fidelity Blue Chip Value ETF, the Adviser normally invests the Fund's assets primarily in equity securities. The Adviser normally invests at least 80% of the Fund's assets in blue chip companies. Blue chip companies are companies that, in the Adviser's view, are well-known, well-established and well-capitalized. Although blue chip companies generally have large or medium market capitalizations, the Adviser may invest in companies that it believes have good, long-term prospects to become blue chip companies. The Adviser may invest the Fund's assets in securities of foreign issuers in addition to securities of domestic issuers. The Adviser invests the Fund's assets in companies it believes have above-average growth potential (for Fidelity Blue Chip Growth ETF) or securities of companies that it believes are undervalued in the marketplace in relation to factors such as the company's assets, sales, earnings, growth potential, or cash flow, or in relation to securities of other companies in the same industry (for Fidelity Blue Chip Value ETF).

Each Fund may invest only in ETFs, Exchange-traded¹⁰ notes, Exchange-traded common stocks,¹¹ common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American Depositary Receipts ("ADRs"),¹² Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures¹³ that trade contemporaneously with the Shares, as well as cash and cash equivalents (collectively, "Permissible Investments").¹⁴

B. Other Parties¹⁵

¹⁰ The term "Exchange" refers to a national securities exchange as defined in Section 2(a)(26) of the 1940 Act.

¹¹ Although a Fund may invest in securities of companies of any capitalization, a Fund will not invest in "penny stocks," as defined by Rule 3a51-1 under the Exchange Act.

¹² ADRs are issued by a U.S. financial institution (a "depository") and evidence ownership in a security or pool of securities issued by a foreign issuer that have been deposited with the depository. Each ADR is registered under the Securities Act on Form F-6. ADRs in which a Fund may invest will trade on an Exchange.

¹³ Exchange-traded futures are U.S. listed futures contracts where the future contract's reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly, such as an S&P 500 index future. All future contracts that a Fund may invest in will be traded on a U.S. futures exchange, such as the Chicago Board of Trade or the Chicago Mercantile Exchange.

¹⁴ Cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

¹⁵ The Trust, the Adviser, any Sub-Adviser (defined below), and the Distributor each will not be affiliated with the Listing Exchange or any other Market.

1. The Adviser

FMR will be the investment adviser to each Initial Fund. FMR is a Delaware limited liability company registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (“Advisers Act”). Any future Adviser to the Funds will also be registered with the Commission as an investment adviser under the Advisers Act.

The Adviser, subject to the oversight and authority of the Board, will develop the overall investment program for each Fund. The Adviser may enter into sub-advisory agreements with investment advisers to act as sub-advisers with respect to the Funds (each a “Sub-Adviser”). Any Sub-Adviser will be registered with the Commission as an investment adviser under the Advisers Act.

2. The Distributor and Authorized Participants

The Distributor, a broker-dealer registered with the Commission under the Exchange Act, is a Delaware limited liability company and will act as the distributor and principal underwriter of the Funds.¹⁶ The Distributor will distribute Shares on an agency basis. Any future Distributor of the Funds will also be a broker-dealer registered with the Commission under the Exchange Act. The Distributor of any Fund may be an affiliated person of the Adviser and/or Sub-Advisers.

All orders to purchase Creation Units (defined below) must be placed with the Distributor by or through an “Authorized Participant,” which is a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase and redemption of Creation Units.¹⁷

C. Shares

As discussed in further detail below, each Fund will issue Shares only in large aggregations (“Creation Units”). Creation Units will be separable upon issue into such individual Shares, which will be listed and traded at negotiated prices on a Listing Exchange.

Shares will be registered in book-entry form only and the Funds will not issue Share certificates. The Depository Trust Company (“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 DTC Participants. Beneficial owners will exercise their rights in such securities indirectly through the DTC and DTC Participants. Delivery of all notices, statements, shareholder reports and other communications will be at the Funds’ expense through the customary practices and facilities of the DTC and DTC Participants.

¹⁶ As used herein, the term “Distributor” also includes any future Distributor of the Funds. Any future Distributor of the Funds would be a registered broker-dealer under the Exchange Act.

¹⁷ No promoter, principal underwriter (e.g., Distributor), or affiliated person of the Fund, or any affiliated person of such person will be an Authorized Participant in Shares unless the affiliation arises under Section 2(a)(3)(A) or (C) of the 1940 Act due solely to ownership of Shares.

D. Purchases and Redemptions of Shares

1. General

The Trust will offer, issue and sell Shares of each Fund to investors only in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of each Fund is ordinarily expected to be determined at 4:00 p.m. Eastern Time on each Business Day. The Trust will sell and redeem Creation Units of each Fund only on a Business Day. Creation Units of the Funds may be purchased and/or redeemed entirely or in part on a cash basis, as permissible under the procedures described below.

Shares will be listed on a Listing Exchange and traded in the secondary market in the same manner as other equity securities and 6c-11 ETFs. It is expected that the Listing Exchange will select, designate or appoint one or more specialists or market makers (collectively, “Exchange Market Makers”) for the Shares of each Fund.¹⁸

The price of Shares will be based on a current bid/offer in the secondary market. The price of Shares of any Fund, like the price of all traded securities, is subject to factors such as supply and demand, and it is also subject to the current value of the instruments held in each Fund’s portfolio. Shares of a Fund, available for purchase or sale on an intraday basis, do not have a fixed relationship to the previous day’s NAV or the current day’s NAV. Therefore, prices on the Listing Exchange may be below, at or above the most recently calculated NAV of such Shares. No secondary sales will be made to broker-dealers at a concession by the Distributor or a Fund. Transactions involving the purchases or sales of Shares on the Listing Exchange will be subject to customary brokerage fees and charges, if applicable.

2. Procedures Applicable to Purchases and Redemptions

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of Deposit Instruments (defined below) and redeeming shareholders will receive an in-kind transfer of Redemption Instruments (defined below). The names and quantities of the instruments for deposits (“Deposit Instruments”) and redemptions (“Redemption Instruments”) (collectively, “Creation Basket”)¹⁹ will be the same as the Fund’s Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis, as described below.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

¹⁸ No affiliated person of the Fund or affiliated person of such person will maintain a secondary market in Shares except where the affiliation arises under Section 2(a)(3)(A) or (C) of the 1940 Act due solely to ownership of Shares.

¹⁹ Deposit Instruments and Redemption Instruments may include cash and/or securities.

A Fund that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely or in part on a cash basis.²⁰ In such an instance, the Fund will announce, before the open of trading on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.

3. Transaction Fees

All persons purchasing or redeeming Creation Units may incur a transaction fee to cover the estimated cost to a Fund of processing the transaction, including the costs of clearance and settlement charged to it by the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or DTC, and the estimated trading costs incurred in converting the Creation Unit to the desired portfolio composition (“Transaction Fee”). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Adviser to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.

The purpose of the Transaction Fee is to protect the existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.²¹ Transaction Fees will differ for each Fund, depending on the transaction expenses related to the instruments held in the Fund’s portfolio. Variations in the Transaction Fee may be made from time to time. No sales charges for purchases of Shares of any Fund will be imposed by any Fund.

E. Potential Investors and Users of Shares

The Trust expects that there will be several categories of market participants who are likely to be interested in purchasing Creation Units. One is the arbitrageur, who stands ready to take advantage of any slight premium or discount in the market price of Shares on the Listing Exchange versus the cost of creating a Creation Unit to be broken down into individual Shares. The Trust also expects that Exchange Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, may purchase Creation Units for use in their own market making activities.

The Trust expects that secondary market purchasers of Shares will include both institutional and retail investors. Like 6c-11 ETFs, the Funds will issue Shares that can be bought or sold like stocks any time throughout the trading day at market prices that are expected to be close to NAV; may be relatively tax-efficient investment vehicles to the extent that certain Funds can minimize capital gains by eliminating low cost basis securities from the portfolio through the in-kind redemption process; and will immediately reinvest interest received on the instruments held in a Fund’s portfolio.

²⁰ In determining whether a Fund will issue or redeem Creation Units entirely or partly on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors.

²¹ Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments or requires purchases or redemptions to be made entirely or in part in cash on a given day, the Fund may assess a higher Transaction Fee to offset higher transaction costs to the Fund.

PART II

A. Dissemination of Information about a Fund's Portfolio Securities

As noted above, the principal difference between the Funds and 6c-11 ETFs is that the Funds will not publicly disclose their complete portfolio holdings on a daily basis. Instead, on each Business Day, before the commencement of trading of Shares, each Fund will disclose on its website: (1) the contents of a Tracking Basket, designed to track closely the daily performance of the Fund, and (2) the Tracking Basket Weight Overlap.

1. Tracking Basket

As explained in note 7, the Tracking Basket will solely consist of a combination of Strategy Components, Representative ETFs, and cash and cash equivalents.²² An optimization process is applied to select the Strategy Components from among the most recently disclosed portfolio holdings. Representative ETFs are selected for inclusion in the Tracking Basket such that, when aggregated with the other Tracking Basket components, the Tracking Basket corresponds to the Fund's overall holdings exposures. The Adviser will not hold Representative ETFs in a Fund's portfolio, except for purposes of effecting transactions in Creation Units. Representative ETFs may constitute no more than 50% of the Tracking Basket's assets on each Business Day at the time the Tracking Basket is published.

2. Tracking Basket Weight Overlap

On each Business Day, the Tracking Basket Weight Overlap will be published on the Fund's website before the commencement of trading of Shares. Tracking Basket Weight Overlap will be calculated by taking the lesser weight of each asset held in common between a Fund's portfolio and the Tracking Basket, and adding the totals.

3. Portfolio Holdings Disclosure

Each Fund anticipates disclosing its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, on its website on a monthly basis with a 30 day lag.²³

B. Dissemination of Information about Shares

As noted above, each Fund's Creation Basket will be the same as the Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis.²⁴ Each Business Day, before the open of trading on the Listing Exchange, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising its Creation Basket, as well as the estimated

²² The Tracking Basket will only include Permissible Investments.

²³ The Adviser reserves the right to apply other portfolio holdings disclosure policies to the extent such policies are: (i) deemed appropriate for Future Funds; (ii) approved by a Fund's Board; and (iii) consistent with the requirements of the 1940 Act.

²⁴ The Tracking Basket and the Tracking Basket Weight Overlap will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

C. Dissemination of Information about the Funds

1. Website

In addition to the information described in Part II, Section A above, each Fund's website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV.²⁵ Each Fund's website will also provide: (1) any other information regarding premiums and discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended; and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.²⁶

2. Disclosure Documents

Investors interested in a particular Fund can obtain its prospectus, statement of additional information ("SAI"), shareholder reports, Form N-CSR and Form N-CEN, filed with the Commission. The prospectus, SAI and shareholder reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

The Trust will take steps to avoid investor confusion between the Funds and actively managed ETFs ("Active ETFs") that publicly disclose their complete portfolio holdings on a daily basis. The Trust will make clear the distinctive features of the Funds in each Fund's prospectus, SAI, website, and marketing materials. In addition, each Fund's summary prospectus, prospectus, website, and marketing materials will include a legend that will highlight for investors the differences between the Funds and traditional Active ETFs, as well as disclosure relating to the risks of investing in a Fund.

Further, in its prospectus, marketing materials and website, each Fund will describe in plain English the nature and purpose of the Tracking Basket, how the Tracking Basket is designed to differ from the Fund's actual portfolio, and where an investor can get access to the Tracking Basket and the Tracking Basket Weight Overlap.

The Funds will also disclose that because the Shares are traded in the secondary market, a broker-dealer may charge a commission to execute a transaction in Shares, and an investor also may incur the cost

²⁵ The "Closing Price" of Shares refers to the official closing price of Shares on the Fund's Listing Exchange. The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based on the National Best Bid and Offer ("NBBO") at the time that the Fund's NAV is calculated. The "NBBO" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "premium/discount" refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day. The "spread" refers to the difference between the simultaneous bid and ask prices quoted for an ETF's shares on the secondary market.

²⁶ See 1940 Act Rule 6c-11(c)(1)(ii) - (vi), 17 CFR 270.6c-11(c)(1)(ii) - (vi).

of the spread between the price at which a dealer will buy Shares and the somewhat higher price at which a dealer will sell Shares.

3. Other Information

Because each Fund's Shares will be listed on a Listing Exchange, prospective investors will have access to information over and above what is normally available for traditional mutual funds. For example, information regarding market price and volume is and will be continually available on a real-time basis throughout the day on brokers-dealers' computer screens and other electronic services. In addition, the previous day's Closing Price and trading volume information will be published daily in the financial section of newspapers.

PART III

A. Comparison of the Funds and 6c-11 ETFs

The Funds will operate in a manner that is similar to the operation of 6c-11 ETFs. Specifically, like 6c-11 ETFs, each of the following will be true of the Funds:

- (i) Shares will be issued by an open-end management investment company that is registered with the Commission;
- (ii) The Funds will continuously redeem, at NAV, Creation Units of Shares, and it is expected that the secondary market price of the Shares should not vary substantially from the NAV of the Shares;
- (iii) The Shares will be listed and traded on a Listing Exchange;
- (iv) The website for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and Closing Price or Bid/Ask Price, a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV, and any other information regarding premiums and discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website will also disclose any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended;
- (v) Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of Creation Baskets that are in the best interests of the Fund and its shareholders, including the process for any revisions to or deviations from those parameters;
- (vi) Each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) all written agreements (or copies thereof) between an Authorized Participant and the Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase or redemption of Creation Units; (ii) a copy of the Tracking Basket published on the Fund's website for each Business Day; and (iii) a list

of all creation or redemption baskets exchanged with an Authorized Participant where cash was included in the basket in lieu of some or all of the Tracking Basket securities (except for cash included because the securities are not eligible for trading by the Authorized Participant or the investor on whose behalf the Authorized Participant is acting), the amount of any such cash in lieu and the identity of the Authorized Participant conducting the transaction; and

- (vii) Each Fund will meet the IRC diversification requirement.

The Funds differ from 6c-11 ETFs in that the Funds will not publicly disclose their complete portfolio holdings on a daily basis.²⁷ Given the amount of information that will be disclosed about each Fund, the Trust believes that this difference should not make the Funds ineligible for the relief. Applicants believe that there will be sufficient information to: (i) “provide customers engaging in creation or redemption transactions an opportunity to identify or inquire about potential conflicts of interest involving a component security a broker-dealer would otherwise be required to disclose”; and (ii) “help customers determine if they should request that their broker-dealer provide any omitted information.”²⁸

B. The Effectiveness of the Funds’ Proposed Arbitrage Mechanism

In the view of the Trust and the Adviser, an efficient ETF arbitrage mechanism is a result of arbitrageurs being able to execute low-risk arbitrage trades in an ETF’s shares. This view is based on the fact that, in their experience, as the risk of a trade increases, so must the profit potential for the trade to be undertaken by a trader or arbitrageur. In the ETF context, this means that, the profit potential needed for an arbitrageur to undertake an arbitrage trade in an ETF’s shares depends on the risk magnitude of the trade. The greater the risk, therefore, the wider the spread would need to be for the arbitrageurs to engage in a trade. Overall, reducing the risk of an arbitrage trade should encourage market activity that is designed to drive the market price of an ETF’s shares toward NAV and reduce any spread and premium/discount between such market price and NAV.

Active ETFs currently offered in the market seek to facilitate low-risk arbitrage trades by providing full portfolio holdings transparency daily. Because FMR is an active manager that uses proprietary research and expertise to manage client portfolios, FMR has determined that, in many circumstances, it may not be appropriate for it to make its portfolios or strategies “transparent.” By revealing holdings daily, Active ETFs risk signaling to the market their investment intent with respect to certain securities, leading other market participants to “front run” and trade and establish sizable positions in anticipation of activity. The Trust and the Adviser recognize that publication of the Tracking Basket is not equivalent to publication of the complete portfolio holdings of a traditional Active ETF, and could potentially cause a Fund’s Shares to have wider spreads and larger premiums/discounts than traditional Active ETFs.²⁹ However, as described

²⁷ The Funds also have less flexibility than 6c-11 ETFs in certain respects given the limitations on Permissible Investments, but the Trust does not believe that this difference has any impact on the relief requested herein.

²⁸ See Order at 7.

²⁹ A variety of factors may contribute to wider spreads and larger premiums/discounts, including severe market disruption, diminished liquidity of the portfolio, and less portfolio transparency. In these circumstances, investors may pay more or less than NAV when they purchase Shares, or receive more or less than NAV when they sell Shares, in the secondary market. The Trust and the Adviser believe that the potential for wider spreads and larger

in further detail below, the Trust and the Adviser have concluded that low-risk arbitrage trades in Shares can also be facilitated by disclosing on a daily basis a Tracking Basket comprised of Strategy Components, Representative ETFs, and cash and cash equivalents, which can be used as a pricing and hedging vehicle by Authorized Participants and market makers.

The Trust and the Adviser believe that the Tracking Basket will enable arbitrageurs to understand the value and risk of a Fund's actual portfolio and to create effective hedging strategies to allow for efficient arbitrage of Fund Shares. As noted above, the Tracking Basket will be constructed utilizing a mathematical optimization process to minimize deviations in the daily returns of the Tracking Basket relative to the daily returns of the Fund. Market participants should have sufficient information available to them about the Tracking Basket and its historical performance versus that of the Fund such that they should be able to anticipate deviations in such performance. Additionally, the daily returns of the Tracking Basket should have sufficiently small deviation from the daily returns of the Fund. Taken together, these factors should allow market participants to have confidence, and be able, to trade effectively, as well as hedge their positions accurately. Moreover, these factors should result in narrow bid/ask spreads, as arbitrageurs will be able to anticipate the implied risk of arbitrage trades and reduce arbitrage trade costs. Furthermore, the Trust and the Adviser believe that active two-way markets will develop for Fund Shares and competition for trade flow will also drive market participants to maintain narrow bid/ask spreads. As is the case with existing ETFs, arbitrageurs would be able to assess whether the market price of a Fund's Shares is higher or lower than the approximate intraday value of the Fund's actual portfolio (as represented by the intraday price of the Tracking Basket), and to make arbitrage and hedging decisions using the Tracking Basket. For example, if a Fund's Shares are trading on a Listing Exchange at a discount to the value of the Tracking Basket, arbitrageurs would purchase the number of Shares needed to assemble a Creation Unit and then redeem the Creation Unit from the Fund in exchange for the more valuable securities in the Tracking Basket. In addition, an arbitrageur could hedge its intraday risk by selling short the securities in the Tracking Basket. The arbitrageur would use securities in the Tracking Basket it obtained when redeeming the Creation Unit to cover its short positions. The arbitrageur's purchases of Shares would have the effect of reducing the supply of Shares in the market, causing the market price of the Shares to increase, thereby bringing the market price of the Shares closer to the NAV of the Tracking Basket.

The Trust and the Adviser believe the Funds' arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Trust and the Adviser have observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international stock and bond ETFs, and certain ETFs that seek to track the (price and yield) performance of an underlying index. While the ability to value and hedge many of these ETFs in the market may be limited, the majority of these ETFs have maintained an effective arbitrage mechanism and traded efficiently.

PART IV

The Trust, on behalf of itself, the Funds, the applicable Listing Exchanges, other Markets, the Distributor, Authorized Participants and other persons or entities engaging in transactions in the Shares,

premiums/discounts will be mitigated over time as a result of increasing secondary market volume, Authorized Participant activity, and marketplace acceptance of the Funds.

requests that the Commission and its Staff grant exemptive, interpretive or no-action advice or relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, and 15c1-6 under the Exchange Act.

A. Rule 10b-10

Rule 10b-10 under the Exchange Act requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. The Trust requests that the Commission provide exemptive or interpretive relief from application of Rule 10b-10, as discussed below, with respect to the creation (i.e., issuance) or redemption of Shares (all of which are in Creation Unit size aggregations). The Trust is not requesting exemptive or interpretive relief from Rule 10b-10 in connection with purchases and sales of Shares in the secondary market.

The Trust proposes that Authorized Participants and other broker-dealers acting for their customers in depositing Deposit Instruments and cash in exchange for Creation Units or redeeming Shares in Creation Unit size aggregations for Redemption Instruments and cash be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the identity, number and price of the individual Deposit Instruments tendered to the Trust for purposes of creation of Creation Units, or the identity, number and price of the Redemption Instruments to be delivered by the Trust to the redeeming Authorized Participant or customer redeeming through the Authorized Participant. Information about the Shares and the prices of the securities and other instruments held by each Fund (as reflected in the Tracking Basket) will be readily available from a variety of sources throughout each Business Day. The composition of the basket of Deposit Instruments to be tendered to the Trust through the Funds' custodian for creation purposes and of the basket of Redemption Instruments to be delivered on redemption will be disseminated by the custodian on each Business Day and will be applicable to requests for creations or redemption, as the case may be, on that day. This information will be made available to requesting Authorized Participants and other broker-dealers or other persons through the NSCC. Moreover, institutions and market professionals will be readily able to calculate independently such information based on publicly available information and the basket information published by a Fund each Business Day.

The Trust anticipates that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable basket to be delivered on creation or received on redemption, so that specific information on the Deposit Instruments to be delivered on creation or Redemption Instruments to be received on redemption in the Rule 10b-10 notification would be redundant.

The Trust agrees that any exemptive or interpretive relief under Rule 10b-10 with respect to creations and redemptions be subject to the following conditions:

- (1) Confirmation statements of creation and redemption transactions in Shares will contain all of the information specified in paragraph (a) of Rule 10b-10 other than identity, price, and number of Deposit Instruments or Redemption Instruments in the applicable creation basket or redemption basket;
- (2) Any confirmation statement of a creation or redemption transaction in Shares that omits the identity, price, or number of Deposit Instruments or Redemption Instruments will

contain a statement that such omitted information will be provided to the customer upon request; and

- (3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

C. Section 11(d)(1)

Section 11(d)(1) of the Exchange Act generally prohibits a person who is acting as a broker or a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which such broker or dealer participated as a member of a selling syndicate or group within thirty days prior to such transaction.

The Order grants relief under Section 11(d)(1) for 6c-11 ETFs that meet the IRC diversification requirement, subject to certain conditions.³⁰ The Trust requests that similar relief be extended to the Funds. The Funds will meet IRC diversification requirement and will also satisfy the additional conditions in the Order for relief under Section 11(d)(1). First, neither an Authorized Participant that is a registered broker-dealer (“Broker-Dealer AP”), nor any natural person associated with such Broker-Dealer AP, directly or indirectly (including through any affiliate of such Broker-Dealer AP), will receive from the “Fund Complex”³¹ any payment, compensation, or other economic incentive to promote or sell the shares of the Funds to persons outside the fund complex, other than non-cash compensation currently permitted under Financial Industry and Regulatory Authority (“FINRA”) rule 2341(l)(5)(A), (B), or (C) (“non-cash compensation”). In addition, the Broker-Dealer AP will not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on shares of the Fund before thirty days have passed from the date that the Fund’s shares initially commence trading (except to the extent that such extension, maintenance, or arranging of credit is otherwise permitted pursuant to Rule 11d1-1). Finally, broker-dealers who effect only secondary market transactions (“Non-AP Broker-Dealers”) will not (and their associated persons who are natural persons will not), directly or indirectly (including through any affiliate of such Non-AP Broker-Dealer), receive from the Fund Complex any payment, compensation or other economic incentive to promote or sell the shares of the Fund to persons outside the Fund Complex, other than non-cash compensation.

Although the Funds differ from 6c-11 ETFs in that the Funds will not disclose their complete portfolio holdings on a daily basis, the Trust does not believe that this distinction is significant for purposes of this relief. The Trust notes in particular that the availability of information relating to Fund holdings is

³⁰ The Staff previously issued class relief under Section 11(d)(1) with respect to ETFs that meet specified conditions set forth in the SIA Letter. The Staff extended this relief in the WisdomTree Letter to cover actively managed ETFs that disclose their complete holdings daily and that generally satisfy the conditions for a “Qualifying ETF,” as defined in the SIA Letter.

³¹ The term “Fund Complex” refers to the issuer of an ETF’s shares, any other issuer of ETF shares that holds itself out to investors as a related company for purposes of investment or investor services; any investment adviser, distributor, sponsor, or depositor of any such issuer; or any “affiliated person” (as defined in Section 2(a)(3) of the 1940 Act) of any such issuer or any such investment adviser, distributor, sponsor, or depositor.

irrelevant when considering the “share-pushing” conflict of interest Section 11(d)(1) is intended to address.³² Accordingly, the Trust believes that relief from Section 11(d)(1) is warranted.

D. Rules 15c1-5 and 15c1-6

Rule 15c1-5 under the Exchange Act requires a broker or dealer controlled by, controlling, or under common control with the issuer of a security who induces the purchase or sale by a customer of the security to disclose the existence of such control before entering into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary distribution of any security in which it effects any transaction in or for such customer’s account or induces the purchase or sale of such security by such customer.

The Trust believes that disclosure by a broker-dealer of a control relationship with the issuer of a Deposit or Redemption Instrument in the Fund’s Tracking Basket, or of a participation in the distribution of such instrument, would impose an unnecessary and unjustifiable burden on broker-dealers engaging in Share transactions for their customers. There is no realistic potential for manipulating the market price of a Deposit or Redemption Instrument in the Fund’s Tracking Basket by means of transactions in Shares. Such a strategy would be both expensive and inefficient.

Like 6c-11 ETFs, the diversification of a Fund’s portfolio (and, in turn, its Tracking Basket) “should reduce the impact [of] any potential conflicts of interest a broker-dealer may have and mitigate the concern that a broker-dealer could use [the Fund] to avoid disclosure of a conflict of interest that would otherwise be required to be disclosed under [R]ules 15c1-5 and 15c-6.”³³ Moreover, because customers will have visibility into the contents of the Tracking Basket, they will have an “opportunity to identify or otherwise inquire about control relationships with the issuer or interest in a distribution of a component security that a broker-dealer would otherwise be required to disclose pursuant to these [R]ules.”³⁴

The application of Rules 15c1-5 and 15c1-6 could adversely affect the attractiveness of the Shares to broker-dealers and thereby affect market liquidity and the utility of the Shares as a form of basket trading. The Trust, therefore, requests the Staff to grant no-action relief from application of the rules with respect to creations and redemptions of Shares. The Trust agrees that any exemptive or interpretive relief under Rules 15c1-5 and 15c1-6 would be subject to a condition that requires the broker-dealer to provide any information to which a customer is entitled under the rules upon request and to fulfill such requests in timely manner.

³² See SIA Letter (incoming letter) (“Section 11(d)(1) was intended to address conflicts of interest arising in circumstances in which a person acts as both a broker and a dealer. The restrictions it imposes on the extension, maintenance, and arranging of credit in connection with a new issue of securities are designed to protect investors from ‘one of the greatest potential evils inherent in the combination of the broker and dealer function in the same person, by assuring that [a broker-dealer] will not induce his customers to buy on credit securities which he has undertaken to distribute to the public.’”) (citation omitted).

³³ See Order at 13.

³⁴ See *id.*

Ms. Emily Westerberg Russell
May 19, 2020
Page 16

PART V

Based on the foregoing, the Trust respectfully requests that the Commission and the Staff grant the relief requested herein. The forms of relief requested are substantially similar to those actions which the Commission and the Staff have taken in similar circumstances.

Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call the undersigned at 617.392.2211.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia", with a long, sweeping horizontal flourish extending to the right.

Cynthia Lo Bessette

26262012