



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

October 24, 2006

Stuart M. Strauss, Esq.
Clifford Chance US LLP
31 West 52nd Street
New York, NY 10019

Re: Class Relief for Exchange Traded Index Funds
File No. TP 07-07

Dear Mr. Strauss:

In your letter dated October 23, 2006, as supplemented by conversations with the staff of the Division of Market Regulation ("Staff"), the PowerShares Exchange-Traded Fund Trust (the "Trust") on behalf of itself, the PowerShares Listed Private Equity Portfolio, the PowerShares Financial Preferred Portfolio (collectively the "Funds" and each a "Fund"), the American Stock Exchange and any other national securities exchange or national securities association on or through which shares of the Funds ("Shares") may subsequently trade, and persons or entities engaging in transactions in Shares, requests no-action advice, interpretive, or exemptive relief with respect to specified rules. Specifically, the Trust requests exemptions from, or no-action or interpretive advice regarding, Rules 10a-1, 10b-17, and 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act"), Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO in connection with secondary market transactions in Shares and the creation and redemption of Shares.

As you note in your letter, the Securities and Exchange Commission ("Commission") or the Staff has granted relief similar to that requested by the Trust with respect to secondary market transactions in Shares and the creation and redemption of Shares in connection with other exchange-traded funds ("ETFs")¹ on numerous occasions, including prior class relief for ETF products that meet certain criteria.²

¹ ETFs are investment companies registered under the Investment Company Act of 1940 (the "Investment Company Act") either as unit investment trusts or as open-end investment companies. Shares of ETFs are traded by both institutional and retail investors on securities exchanges and in the over-the-counter markets at negotiated prices. ETFs are designed to replicate the holdings or correspond to the performance and yield of a reference securities index or a highly correlated subset of the securities underlying the index.

² See Letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Claire P. McGrath, Esq., Vice President and Special Counsel, The American Stock Exchange, dated August 17, 2001 (re: Exemptive Relief for Exchange Traded Index Funds) ("2001 Class Letter"). See also Letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005 (re: No-action Relief From Rule 200(g) of Regulation SHO).

Since the issuance of the 2001 Class Letter, we have continued to provide relief to ETFs that failed to meet one or more of the conditions specified in the 2001 Class Letter. With the additional experience we have gained in this area, we believe that it is appropriate to expand the scope of the relief provided in the 2001 Class Letter.³

Response:

The relief granted herein extends to all ETF shares that are listed and trade on a national securities exchange or national securities association that has obtained approval from the Commission pursuant to Section 19(b) of the Exchange Act of a rule change regarding the listing and trading of the ETF shares on a national securities exchange or national securities association (or that is relying on Rule 19b-4(e) to list and trade the ETF shares).

ETFs meeting the following criteria are granted exemptive and/or no-action or interpretive advice, as more fully described below, with respect to Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO, provided that the following conditions are satisfied:

1. The ETF shares are issued by an open-end investment company or unit investment trust registered with the Commission under the Investment Company Act;
2. The ETF consists of a basket of twenty or more Component Securities,⁴ with no one Component Security constituting more than 25% of the total value of the ETF;⁵
3. At least 70% of the ETF must 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; provided, however,

³ The Commission has also recently provided expanded class relief for ETFs with respect to Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 under the Exchange Act. *See* Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee, dated November 21, 2005.

⁴ For purposes of our response, "Component Securities" are individual securities that comprise the ETF basket, *e.g.*, securities that are assembled to replicate the particular index that the ETF tracks.

⁵ For purposes of our response, whether any one Component Security constitutes more than 25% of the total value of the ETF shall be determined as of the most recent rebalancing of the ETF's reference securities index.

that if the ETF has 200 or more Component Securities, then 50% of the Component Securities must meet the actively-traded securities thresholds;

4. ETF shares are to be issued and redeemed in Creation Unit aggregations of 50,000 shares or such other amount where the value of a Creation Unit is at least \$1 million at the time of issuance; and
5. The ETF must be managed to track a particular index all of the components of which have publicly available last sale trade information. The intra-day proxy value of the ETF per share and the value of the "benchmark" index must be publicly disseminated by a major market data vendor throughout the trading day.

This relief is further subject to "rule-specific" terms described below.

Regulation M

Redeemable securities issued by an open-end management investment company are excepted from the provisions of Rules 101 and 102 of Regulation M. As described above, ETFs must register as an open-end management investment company or a unit investment trust under the Investment Company Act to issue shares that are redeemable only in Creation Units.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Regulation. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities.

With respect to an ETF that is a registered open-end management investment company that will continuously redeem at net asset value Creation Unit size aggregations of shares, and where the secondary market price of shares of the ETF do not vary substantially from the net asset value of such shares (which will be based on the value of the Component Securities in the underlying index and will be computed on a daily basis), the Commission hereby confirms that the ETF will be excepted under paragraph (c)(4) of Rule 101 of Regulation M thus permitting

persons who may be deemed to be participating in a distribution of ETF shares to bid for or purchase shares during their participation in such distribution.⁶

The Commission also confirms the interpretation of Rule 101 of Regulation M that the redemption of Creation Unit size aggregations of ETF shares and the receipt of Component Securities in exchange therefor by a participant in a distribution of ETF shares would not constitute an "attempt to induce any person to bid for or purchase a covered security, during the applicable restricted period"⁷ within the meaning of Regulation M, and therefore would not violate Regulation M.

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

With respect to an ETF that is a registered open-end management investment company that will redeem at net asset value Creation Units of ETF shares, the Commission hereby confirms that the ETF is excepted under paragraph (d)(4) of Rule 102 of Regulation M, thus permitting the ETF to redeem shares during the continuous offering of the shares.

Rule 10a-1

Rule 200 of Regulation SHO defines "short sale" and Rule 10a-1 under the Exchange Act governs short sales generally. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system, and prohibits short sales with respect to these securities unless such sales occur on a "plus tick," (that is, a price above the price at which the immediately preceding sale was effected), or "zero-plus tick," (that is, at the last sale price if it was higher than the last different price). Rule 10a-1 is designed to prevent the market price of a stock or other "reported security," as defined in Rule 11Aa3-1(a)(4) under the Exchange Act, from being manipulated downward by unrestricted short selling.

⁶ We note that Regulation M does not prohibit a distribution participant and its affiliated purchasers from bidding for and purchasing Component Securities in accordance with the exceptions contained in paragraphs (b)(6) and (c)(1) of Rule 101. Rule 101 (b)(6)(i) excepts basket transactions in which bids or purchases are made in the ordinary course of business in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased. Rule 101(b)(6)(ii) excepts adjustments to such a basket made in the ordinary course of business as a result of a change in the composition of a standardized index. Also, Rule 101(c)(1) excepts transactions in "actively-traded securities."

⁷ 17 CFR 242.101

Where the composite and derivative nature of an ETF is such that it would not appear that trading in the ETF's shares would be susceptible to the practices that Rule 10a-1 is designed to prevent, the Commission hereby grants an exemption from Rule 10a-1 to permit sales of ETF shares without regard to the "tick" requirements of Rule 10a-1.⁸

We note that the exemption from Rule 10a-1 would not apply to secondary market portfolio sales made in connection with the redemption of ETF shares.

Rule 200(g) of Regulation SHO

Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any equity security as "long," "short," or "short exempt." Rule 200(g)(2) requires that a short sale order must be marked "short exempt" if the seller is relying on an exception from the tick test of Rule 10a-1 of the Exchange Act or any short sale price test of any exchange or national securities association.

Accordingly, in conjunction with the exemption granted above to permit sales of ETF shares without regard to the "tick" requirements of Rule 10a-1, the Staff will not recommend to the Commission enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks "short," rather than "short exempt," a short sale that is effected in ETF shares subject to the following conditions:

- i. For each exempt short sale, the various market centers that execute such sales have instituted procedures to "mask" the short sale character of the transaction so that they are executed as short exempt;
- ii. Such market centers monitor on a regular basis to confirm that any such product or transaction continues to meet the conditions for the exemptive relief and re-institute the price test for any product or transaction that fails to satisfy such conditions;
- iii. A broker-dealer executing exempt short sales will mark such sales as "short," and in no event will such sales be marked "long;" and
- iv. The market centers will maintain an audit trail of all such trade executions, which is capable of being produced and subject to review upon request by the Commission and other appropriate regulatory authorities.

Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution, stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b).

⁸ The market value of eligible ETF shares must rise or fall based primarily on changes in the net asset value of the Component Securities of the particular underlying index.

With respect to an ETF that is registered under the Investment Company Act as an open-end management investment company, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to such ETFs with respect to transactions in ETF shares.⁹

Rule 14e-5

Rule 14e-5 under the Exchange Act, among other things, prohibits any covered person in connection with a tender offer for equity securities from, directly or indirectly, purchasing or arranging to purchase any subject or related securities except as part of the offer, from the time the offer is publicly announced until its expiration.

Rule 14e-5 explicitly includes dealer-managers of a tender offer within the rule's definition of covered person. Accordingly, while acting as dealer-manager of a tender offer for a Component Security, a dealer-manager is prohibited from purchasing or arranging to purchase that Component Security until the expiration of the offer.

Where purchases or redemptions of ETF shares do not appear to result in the abuses at which Rule 14e-5 is directed and so long as any bids or purchases by dealer-managers are not effected for the purpose of facilitating a tender offer, the Commission hereby grants an exemption from Rule 14e-5 to permit any person acting as dealer-manager of a tender offer for a Component Security to: (1) redeem ETF shares in Creation Unit size aggregations for Component Securities that may include a security subject to the tender offer; and (2) purchase ETF shares during such offer.¹⁰

The foregoing exemptions from Rules 10a-1, 10b-17, and 14e-5, interpretive guidance with respect to Rules 101 and 102 of Regulation M, and no-action position taken under Rule 200(g) of Regulation SHO, are strictly limited to the application of those rules to transactions involving ETF shares under the circumstances described above. 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 exemptions from Rules 10a-1, 10b-17, and 14e-5, interpretive guidance with respect to Rules 101 and 102 of Regulation M, and no-action position taken under Rule 200(g) of Regulation SHO are subject to the condition that such transactions in ETF shares, any Component Security, or any related securities are not made for the purpose of creating actual, or

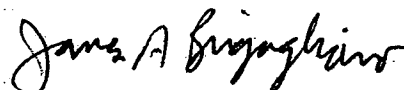
⁹ We also note that compliance with Rule 10b-17 would be impractical in light of the nature of ETFs. This is because it is not possible for ETFs to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

¹⁰ The Staff also confirms its no-action position under Rule 14e-5 when a broker-dealer acting as a dealer-manager of a tender offer for a Component Security purchases such Component Security in the secondary market for the purpose of tendering them to purchase a Creation Unit size aggregation of ETF shares, if such transactions are effected as adjustments to such a basket in the ordinary course of business as a result of a change in the composition of the relevant index.

apparent, active trading in or raising or otherwise affecting the price of such securities. Finally, requests for relief for products not meeting the above criteria will continue to be considered upon request on a case-by-case basis.¹¹

These exemptions and interpretive advice and no-action positions are subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these exemptions and no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these exemptions and no-action 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.

For the Commission, by the Division of Market
Regulation, pursuant to delegated authority,



James A. Brigagliano
Acting Associate Director

¹¹ For example, the relief does not apply to transactions in securities issued by entities not registered as investment companies under the Investment Company Act. *See, e.g.*, Letters from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to David Yeres, Esq., Clifford Chance US LLP, dated January 27, 2005 (iShares COMEX Gold Trust) and to George T. Simon, Esq., Foley & Lardner LLP, dated December 5, 2005 (Euro Currency Trust); and Letter from James A. Brigagliano, Esq., Acting Associate Director, Division of Market Regulation, to James M. Cain, Esq., Sutherland, Asbill & Brennan LLP, dated April 7, 2005 (U.S. Oil Fund). We also note that separate relief has been provided by the Staff for certain commodity-based investment vehicles with respect to Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO. *See* Letter from Racquel L. Russell, Esq., Branch Chief, Division of Market Regulation, to George T. Simon, Esq. Foley & Lardner LLP, dated June 21, 2006.

**C L I F F O R D
C H A N C E**

CLIFFORD CHANCE US LLP

31 WEST 52ND STREET
NEW YORK NY 10019 6131

TEL +1 212 878 8000
FAX +1 212 878 8375
www.cliffordchance.com

Stuart M. Strauss
Partner

DIRECT TEL +1 212 878 4931
DIRECT FAX +1 212 878 8375
Stuart.Strauss@CliffordChance.com

October 24, 2006

Mr. James A. Brigagliano
Acting Associate Director
Office of Trading Practices and Processing
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE, Mail Stop 10-1
Washington, DC 20549

SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF MARKET REGULATION

Re: Request for Exemptive, Interpretive or No-Action Relief from Rules 10a-1; 10b-17; and 14e-5; Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO promulgated under the Securities Exchange Act of 1934.

Dear Mr. Brigagliano:

PowerShares Exchange-Traded Fund Trust (the "Trust") is an open-end management investment company which was organized on June 9, 2000 as a Massachusetts business trust. The Trust currently offers 62 separate investment series.¹ The Trust plans to add additional series to the

¹ These include the PowerShares Aerospace & Defense Portfolio, PowerShares Dividend Achievers™ Portfolio, PowerShares Dynamic Biotechnology & Genome Portfolio, PowerShares Dynamic Building & Construction Portfolio, PowerShares Dynamic Energy Exploration & Production Portfolio, PowerShares Dynamic Food & Beverage Portfolio, PowerShares Dynamic Hardware & Consumer Electronics Portfolio, PowerShares Dynamic Insurance Portfolio, PowerShares Dynamic Large Cap Growth Portfolio, PowerShares Dynamic Large Cap Value Portfolio, PowerShares Dynamic Leisure and Entertainment Portfolio, PowerShares Dynamic Market Portfolio, PowerShares Dynamic Media Portfolio, PowerShares Dynamic Mid Cap Growth Portfolio, PowerShares Dynamic Mid Cap Value Portfolio, PowerShares Dynamic Networking Portfolio, PowerShares Dynamic Oil & Gas Services Portfolio, PowerShares Dynamic OTC Portfolio, PowerShares Dynamic Pharmaceuticals Portfolio, PowerShares Dynamic Retail Portfolio, PowerShares Dynamic Semiconductors Portfolio, PowerShares Dynamic Small Cap Growth Portfolio, PowerShares Dynamic Small Cap Value Portfolio, PowerShares Dynamic Software Portfolio, PowerShares Dynamic Telecommunications & Wireless Portfolio, PowerShares Dynamic Utilities Portfolio, PowerShares FTSE RAFI US 1000 Portfolio, PowerShares Golden Dragon Halter USX China Portfolio, PowerShares High Growth Rate Dividend Achievers™ Portfolio, PowerShares High Yield Equity Dividend Achievers™ Portfolio, PowerShares International Dividend Achievers™ Portfolio, PowerShares Lux Nanotech Portfolio, PowerShares Value Line

Mr. James A. Brigagliano

October 24, 2006

Page 2

Timeliness™ Select Portfolio, PowerShares Water Resources Portfolio, PowerShares WilderHill Clean Energy Portfolio, PowerShares Zacks Micro Cap Portfolio, PowerShares Zacks Small Cap Portfolio, PowerShares FTSE RAFI US 1500 Small-Mid Portfolio, PowerShares FTSE RAFI Energy Sector Portfolio, PowerShares FTSE RAFI Basic Materials Sector Portfolio, PowerShares FTSE RAFI Industrials Sector Portfolio, PowerShares FTSE RAFI Consumer Goods Sector Portfolio, PowerShares FTSE RAFI Health Care Sector Portfolio, PowerShares FTSE RAFI Consumer Services Sector Portfolio, PowerShares FTSE RAFI Telecommunications & Technology Sector Portfolio, PowerShares FTSE RAFI Utilities Sector Portfolio, PowerShares FTSE RAFI Financials Sector Portfolio, PowerShares Dynamic Basic Materials Sector Portfolio, PowerShares Dynamic Consumer Discretionary Sector Portfolio, PowerShares Dynamic Consumer Staples Sector Portfolio, PowerShares Dynamic Energy Sector Portfolio, PowerShares Dynamic Financial Sector Portfolio, PowerShares Dynamic Industrials Sector Portfolio, PowerShares Dynamic Healthcare Sector Portfolio, PowerShares Dynamic Technology Sector Portfolio, PowerShares Dynamic Banking Portfolio, PowerShares Dynamic Healthcare Services Portfolio, PowerShares Dynamic MagniQuant Portfolio, PowerShares Cleantech™ Portfolio, PowerShares Financial Preferred Portfolio, PowerShares Listed Private Equity Portfolio and PowerShares WilderHill Progressive Energy Portfolio (collectively, the "Current Funds"). The Trust's registration statements on Form N-1A were declared effective by the Securities and Exchange Commission on April 17, 2003 (with respect to the PowerShares Dynamic Market Portfolio and the PowerShares Dynamic OTC Portfolio), on December 9, 2004 (with respect to the PowerShares Golden Dragon Halter USX China Portfolio and the PowerShares High Yield Equity Dividend Achievers™ Portfolio), on March 3, 2005 (with respect to the PowerShares WilderHill Clean Energy Portfolio, PowerShares Dynamic Large Cap Growth Portfolio, PowerShares Dynamic Large Cap Value Portfolio, PowerShares Dynamic Mid Cap Growth Portfolio, PowerShares Dynamic Mid Cap Value Portfolio, PowerShares Dynamic Small Cap Growth Portfolio and PowerShares Dynamic Small Cap Value Portfolio), on June 23, 2005 (with respect to the PowerShares Dynamic Biotechnology & Genome Portfolio, PowerShares Dynamic Food & Beverage Portfolio, PowerShares Dynamic Leisure and Entertainment Portfolio, PowerShares Dynamic Media Portfolio, PowerShares Dynamic Networking Portfolio, PowerShares Dynamic Pharmaceuticals Portfolio, PowerShares Dynamic Semiconductors Portfolio and PowerShares Dynamic Software Portfolio), on August 18, 2005 (with respect to the PowerShares Zacks Micro Cap Portfolio), on September 15, 2005 (with respect to the PowerShares Dividend Achievers™ Portfolio, PowerShares High Growth Rate Dividend Achievers™ Portfolio and PowerShares International Dividend Achievers™ Portfolio), on October 26, 2005 (with respect to the PowerShares Aerospace & Defense Portfolio, PowerShares Dynamic Building & Construction Portfolio, PowerShares Dynamic Energy Exploration & Production Portfolio, PowerShares Dynamic Insurance Portfolio, PowerShares Dynamic Oil & Gas Services Portfolio, PowerShares Dynamic Retail Portfolio, PowerShares Dynamic Utilities Portfolio and PowerShares Lux Nanotech Portfolio), on December 6, 2005 (with respect to the PowerShares Dynamic Hardware & Consumer Electronics Portfolio, PowerShares Dynamic Telecommunications & Wireless Portfolio, PowerShares Value Line Timeliness™ Select Portfolio and PowerShares Water Resources Portfolio), on December 19, 2005 (with respect to the PowerShares FTSE RAFI US 1000 Portfolio), on September 20, 2006 (with respect to the PowerShares FTSE RAFI US 1500 Small-Mid Portfolio, PowerShares FTSE RAFI Energy Sector Portfolio, PowerShares FTSE RAFI Basic Materials Sector Portfolio, PowerShares FTSE RAFI Industrials Sector Portfolio, PowerShares FTSE RAFI Consumer Goods Sector Portfolio, PowerShares FTSE RAFI Health Care Sector Portfolio, PowerShares FTSE RAFI Consumer Services Sector Portfolio, PowerShares FTSE RAFI Telecommunications & Technology Sector Portfolio, PowerShares FTSE RAFI Utilities Sector Portfolio and PowerShares FTSE RAFI

Mr. James A. Brigagliano
October 24, 2006
Page 3

Trust (the "New Funds").² This letter requests relief only with respect to the PowerShares Listed Private Equity Portfolio and the PowerShares Financial Preferred Portfolio (the "Funds"), two series of the Trust. The Funds' shares have been approved for listing on the American Stock Exchange (the "AmEx"), subject to notice of issuance. The AmEx is expected to rely on Rule 19b-4(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to list and trade shares of the Funds ("Shares").

The PowerShares Listed Private Equity Portfolio will invest in common stocks specifically consisting of the component securities of the Red Rocks Listed Private Equity Index (the "Listed Private Equity Index"). The PowerShares Financial Preferred Portfolio will invest in preferred stocks specifically consisting of the component securities of the Wachovia Hybrid & Preferred Securities Financial Index (the "WHPS(SM) Financial Index" and, together with the Listed Private Equity Index, are referred to as the "Indexes"). The Trust will issue and redeem Shares only in aggregations of 100,000 Shares (referred to as "Creation Units").³

The Trust, on behalf of itself, the Funds, the AmEx and any other national securities exchange or national securities association on or through which the Shares may subsequently trade (with each such market being a "Market"), and persons or entities engaging in transactions in Shares, as the case may be, requests that the Securities and Exchange Commission (the "Commission") grant exemptive,

Financials Sector Portfolio), on October 12, 2006 (with respect to the PowerShares Dynamic Basic Materials Sector Portfolio, PowerShares Dynamic Consumer Discretionary Sector Portfolio, PowerShares Dynamic Consumer Staples Sector Portfolio, PowerShares Dynamic Energy Sector Portfolio, PowerShares Dynamic Financial Sector Portfolio, PowerShares Dynamic Industrials Sector Portfolio, PowerShares Dynamic Healthcare Sector Portfolio, PowerShares Dynamic Technology Sector Portfolio, PowerShares Dynamic Banking Portfolio, PowerShares Dynamic Healthcare Services Portfolio and PowerShares Dynamic MagniQuant Portfolio) and on October 24, 2006 (with respect to PowerShares Cleantech™ Portfolio, PowerShares Financial Preferred Portfolio, PowerShares Listed Private Equity Portfolio and PowerShares WilderHill Progressive Energy Portfolio) (Securities Act File No. 333-100228, Investment Company Act File No. 811-21265).

² The New Funds of the Trust that are not yet effective, but have filed registration statements with the Securities and Exchange Commission include the PowerShares Dynamic Large Cap Portfolio, PowerShares Dynamic Mid Cap Portfolio, PowerShares Dynamic Small Cap Portfolio, PowerShares Dynamic Deep Value Portfolio, PowerShares Dynamic Aggressive Growth Portfolio, PowerShares Buyback Achievers™ Portfolio, PowerShares NASDAQ® Dividend Achievers™ Portfolio, PowerShares India Tiger Portfolio, PowerShares Autonomic Allocation Research Affiliates Portfolio, PowerShares REIT Preferred Portfolio, PowerShares DWA Technical Leaders™ Portfolio, PowerShares Value Line 400 Portfolio, PowerShares Value Line Industry Rotation Portfolio, PowerShares Dynamic Brand Name Products Portfolio and PowerShares NASDAQ® Internet Portfolio.

³ On March 28, 2003, the Commission granted the Trust and its co-applicants exemptions from the provisions of sections 2(a)(32) and 5(a)(1) of the 1940 Act in order to permit the Trust to maintain its registration as an open-end investment company and to issue shares that are redeemable only in Creation Unit size aggregations of Shares with respect to the initial two portfolios of the Trust, the PowerShares Dynamic Market Portfolio and the PowerShares Dynamic OTC Portfolio, and other funds issued by the Trust in the future that meet the stated criteria, which include the Funds.

Mr. James A. Brigagliano
October 24, 2006
Page 4

interpretive or no-action relief from Rules 10a-1, 10b-17 and 14e-5 under the Exchange Act, Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO under the Exchange Act in connection with secondary market transactions in Shares and the creation or redemption of Creation Units of Shares, as discussed below. The relief requested in this letter is substantially similar to the relief granted by the Commission in a letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Stuart M. Strauss, Clifford Chance US LLP dated March 2, 2005, with respect to the trading of the PowerShares WilderHill Clean Energy Portfolio and a letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Stuart M. Strauss, Clifford Chance US LLP dated October 25, 2005, with respect to the trading of the PowerShares Lux Nanotech Portfolio.

The AmEx has previously received relief⁴ (the "AmEx Letter") with respect to those Exchange Act provisions and rules thereunder. Exchange-traded funds ("ETFs") listed and traded on the AmEx may rely upon the relief granted in the AmEx Letter if such ETFs meet certain conditions, including the following: (a) at least 85% of the ETF must be comprised of component stocks that have a minimum average daily trading volume (ADTV) of at least \$1 million during each of the previous two (2) months of trading prior to formation of the relevant ETF and (b) at least 85% of the ETF must be comprised of component stocks that have a minimum public float value of at least \$150 million; provided, however, if the ETF has 200 or more component stocks, then 75% of the component stocks must meet the \$1 million ADTV and \$150 million public float thresholds. The Current Funds and the New Funds other than the Funds meet all relevant conditions of the AmEx Letter, and they accordingly are relying on the AmEx Letter with respect to the aforementioned Exchange Act provisions and rules.⁵ However, the PowerShares Listed Private Equity Portfolio and the PowerShares Financial Preferred Portfolio currently do not meet the minimum average daily trading volume criteria of the AmEx Letter set forth above, the Trust therefore requests relief with respect to the Funds from the aforementioned Exchange Act provisions and rules.⁶

The Trust notes that its proposal—the creation and issuance by an investment company of shares that individually trade on the AmEx or another market, but that in large aggregations can be purchased from and redeemed with the issuing investment company—is no longer novel. The Commission has in the past thirteen years considered and approved many proposals similar to this proposal. Some of these products have been trading publicly for years, and the Trust is not aware of

⁴ Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath, Vice President and Special Counsel, AmEx, dated August 17, 2001.

⁵ The PowerShares WilderHill Clean Energy Portfolio did not meet the two criteria of the AmEx Letter discussed above and was granted relief by the Commission on March 2, 2005 substantively similar to the relief requested by this letter. The PowerShares Lux Nanotech Portfolio did not meet one criteria of the AmEx Letter discussed above and was granted relief by the Commission on October 25, 2005 substantively similar to the relief requested by this letter.

⁶ Except for the minimum average daily trading volume criteria of the AmEx Letter set forth above, the PowerShares Listed Private Equity Portfolio and the PowerShares Financial Preferred Portfolio meet all conditions of the AmEx Letter, including the minimum public float requirements.

Mr. James A. Brigagliano
October 24, 2006
Page 5

any abuses associated with them. Indeed, several of the products have been so embraced by investors that they routinely are among the highest volume securities on the exchanges on which they trade.

The Funds. The Funds are separate investment portfolios of the Trust. The investment objective of each Fund is to provide investment results that, before fees and expenses, correspond generally to the price and yield of its respective Index. Each Fund's investment objective is not a fundamental policy and can be changed by the Board of Trustees without shareholder approval.

The Funds intend to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code.

The Listed Private Equity Index. The Index is comprised of approximately 40 stocks and American Depository Receipts ("ADRs") of U.S. publicly listed private equity companies, including business development companies ("BDC") and other financial institutions or vehicles whose principal business is to invest in and lend capital to privately-held companies (collectively "listed private equity companies"). The listed private equity companies that comprise the Listed Private Equity Index will be selected based upon reputation, valuation metrics, management, financial data, historical performance and the need for diversification within the portfolio. The Listed Private Equity Index uses a modified equal dollar weighting.

Index Construction.

1. For a stock to be considered for inclusion in the Listed Private Equity Index, it must have a majority of its assets invested or exposed to private companies or have as its stated intention to have a majority of its assets invested in or exposed to private companies. The underlying assets may be domestic or foreign and be listed on a U.S. exchange.
2. The Listed Private Equity Index is composed of a diversified mix of listed private equity companies. The listed private equity companies that will comprise the Listed Private Equity Index will be selected based upon reputation, valuation metrics, management, financial data, historical performance and the need for diversification within the portfolio. Diversification for the Listed Private Equity Index is viewed from three different perspectives: a) stage of investment; b) capitalization structure (e.g., equity, debt, mezzanine); and c) industry focus.
3. Each listed private equity company must have market capitalization of at least \$50 million and a closing price above \$1.00 per share for the trailing six months if not currently in the Listed Private Equity Index.
4. The Listed Private Equity Index uses a modified equal dollar weighting. No single stock may exceed 10% of the Index weight at the time of rebalancing.

The WHPS(SM) Financial Index. The Index is comprised of preferred stocks of approximately 18 financial institutions that have received an industrial sector classification of

Mr. James A. Brigagliano
October 24, 2006
Page 6

"financial" from the Bloomberg Professional Service(R). Stocks in the WHPS(SM) Financial Index will be selected by Wachovia Securities ("Wachovia") pursuant to a proprietary selection methodology. Preferred stocks are a class of equity security that have a payment priority over common stock in the payment of specified dividends and in the event of an issuer's liquidation. Dividends are paid on a fixed or variable rate percentage of the fixed par value at which the preferred stock is issued, and preferred stocks generally have a liquidation value that equals the original purchase price of the stock at the time of issuance. The WHPS(SM) Financial Index tracks the performance of preferred stocks issued exclusively by financial institutions and listed on the New York Stock Exchange or AmEx or quoted on NASDAQ, which meet certain criteria.

Index Construction.

1. Eligible securities that will be included in the WHPS(SM) Financial Index must meet the following criteria: preferred stocks that are issued exclusively by financial institutions; an industrial sector classification of "financial" from the Bloomberg Professional Service(R); U.S. dollar-denominated and publicly issued in the U.S. domestic market; par amount of at least \$25; perpetual preferred securities or depositary preferred securities; maintain a minimum of ten million shares outstanding; and fixed for life dividends.

2. The WHPS(SM) Financial Index does not include convertible preferred stocks, monthly income notes, senior notes or trust preferred securities.

3. The WHPS(SM) Financial Index is calculated using a market capitalization weighting methodology applied in conjunction with the monthly adjustments. The weight of any component stock may not account for more than 20% of the total value of the WHPS(SM) Financial Index. Component stocks greater than 20% of the WHPS(SM) Financial Index are reduced to individually represent 20% of the value of the WHPS(SM) Financial Index. The aggregate amount by which all components over 20% is reduced is redistributed proportionately across the remaining components that represent less than 20% of the WHPS(SM) Financial Index value. After this redistribution, if any other component exceeds 20%, the component is set to 20% of the WHPS(SM) Financial Index value and the redistribution is repeated.

4. The WHPS(SM) Financial Index is subject to monthly rebalancing adjustments. All outstanding preferred stocks are tested for suitability based on eligibility criteria. Stocks that are deemed qualified are added to the WHPS(SM) Financial Index as constituents whereas those that are deemed inappropriate are excluded from the reconstitution of the WHPS(SM) Financial Index. Recalibrations can occur following specific events such as redemption, merger or acquisition, bankruptcy or delisting affecting existing stocks included or excluded from the WHPS(SM) Financial Index. These events will require a daily adjustment or directly influence the next monthly adjustments.

Method of Purchase. AIM Distributors, Inc. (the "Distributor") will act on an agency basis and will be each Fund's "principal underwriter" as defined in Section 2(a)(29) of the Investment

Mr. James A. Brigagliano
October 24, 2006
Page 7

Company Act of 1940, as amended ("1940 Act"). Shares are issued and sold by the Funds only in Creation Units on a continuous basis through the Distributor at their net asset value next determined after receipt of an order in proper form. The Creation Units of the Funds each consist of 100,000 Shares. Creation Units of Shares may be purchased only by or through a DTC Participant that has entered into an agreement with the Trust, the Distributor and the transfer agent, with respect to creations and redemptions of Creation Units ("Authorized Participant"). The Distributor will deliver the Trust's Prospectus (and, upon request, each Fund's Statement of Additional Information) to each person purchasing Creation Units.

The consideration for purchase of a Creation Unit generally consists of the deposit of a designated portfolio of equity securities constituting a substantial replication, or representation, of a Fund's benchmark Index (the "Deposit Securities") and an amount of cash computed as described below (the "Balancing Amount"). Together, the Deposit Securities and the Balancing Amount constitute the "Portfolio Deposit," which represents the minimum investment amount for the purchase of Shares from the Trust. The Balancing Amount represents the difference between the net asset value of a Creation Unit and the market value of the Deposit Securities.

Creation Units of each Fund may be created in advance of receipt by the Trust of all or a portion of the applicable Deposit Securities as described below. In these circumstances, the initial deposit will have a value greater than the net asset value of the Shares on the date the order is placed in proper form since in addition to available Deposit Securities, cash must be deposited in an amount equal to the sum of (i) the Cash Component, plus (ii) 115% of the market value of the undelivered Deposit Securities (the "Additional Cash Deposit"). An additional amount of cash shall be required to be deposited with the Trust, pending delivery of the missing Deposit Securities to the extent necessary to maintain the Additional Cash Deposit with the Trust in an amount at least equal to 115% of the daily marked to market value of the missing Deposit Securities. The Participant Agreement will permit the Trust to buy the missing Deposit Securities at any time. Authorized Participants will be liable to the Trust for the costs incurred by the Trust in connection with any such purchases. These costs will be deemed to include the amount by which the actual purchase price of the Deposit Securities exceeds the market value of such Deposit Securities on the day the purchase order was deemed received by the Distributor plus the brokerage and related transaction costs associated with such purchases. The Trust will return any unused portion of the Additional Cash Deposit once all of the missing Deposit Securities have been properly received by the custodian or purchased by the Trust and deposited into the Trust. In addition, a transaction fee of \$500 will be charged in all cases, plus an additional fee of up to four times the transaction fee may be charged in certain cases as described below. All transaction fees and additional fees will be fully disclosed in the Trust's Prospectus or each Fund's Statement of Additional Information.

All standard orders to purchase Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the AmEx, ordinarily 4:00 p.m., New York time ("Closing Time") on the date such order is placed in order for the purchase of Creation Units to be effected based on the net asset value of Shares as next determined on such date after receipt of the

