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February 15, 2017

By Email

Gary Barnett
Deputy Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Mr. Barnett:

We are writing on behalf of The NASDAQ Private Market, LLC and its registered broker-dealer and alternative trading system ("**ATS**") subsidiary, NPM Securities, LLC (collectively, "**NPM**"), in its role as an operator of a technology platform (the "**Alternatives Platform**").[1] Among the types of entities whose securities are eligible to be traded on the Alternatives Platform are closed-end investment companies registered under the Investment Company Act of 1940, as amended ("**Investment Company Act**" or "**1940 Act**"), that are continuously offered and that engage in periodic tender offers ("**Tender Offer Funds**"). The Tender Offer Funds will engage in continuous offerings of their shares, with subscriptions generally taking place on a monthly basis and will offer their shares at net asset value ("**NAV**"). Initially, NPM expects to focus on Tender Offer Funds that invest in private equity and in private equity funds.

We request that the Securities and Exchange Commission (the "**Commission**" or "**SEC**") grant a limited exemption from Rule 102 of Regulation M under the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), in order to allow Tender Offer Funds to conduct tender offers for their securities pursuant to Rule 13e-4 under the Exchange Act during the applicable restricted period under Regulation M even though periodic auctions in Tender Offer Fund securities also are conducted on the Alternatives Platform, in the manner described below. We further request that the Commission grant a limited exemption from Rule 102 of Regulation M under the Exchange Act regarding a master fund ("**Master Fund**") with two feeder funds, an auction feeder ("**Feeder A**") and a Tender Offer feeder ("**Feeder T**"), in order to allow the Master Fund and Feeder T to conduct tender offers while Feeder A offers liquidity through auctions on the Alternatives Platform, in the manner described below

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[1] The Alternatives Platform is designed, among other things, to conduct auctions for unregistered securities, including certain closed-end fund interests.

(Feeder A funds and Tender Offer Funds collectively "**Auction Funds**," and Auction Funds, Master Funds, and Feeder T funds collectively "**Funds**").

## I. BACKGROUND

NPM currently operates an ATS that effects primary and secondary transactions in unregistered securities (i.e., securities not registered under the Securities Act of 1933, as amended ("**Securities Act**")), and has been granted approval by the Financial Industry Regulatory Authority ("**FINRA**") to expand its activities to allow, among other things, for NPM to use the Alternatives Platform to facilitate secondary transactions for securities in the Auction Funds.[2]

Because closed-end funds are not required to repurchase their shares from investors upon request, a Fund may (but is not obligated to) engage in periodic tender offers, as expressly contemplated by Section 23(c) of the 1940 Act. Such tender offers are conducted under Rule 13e-4 of the Exchange Act and are typically conducted quarterly. Funds currently do not trade on a secondary market and their shareholders are required to be accredited investors, as defined in Rule 501 of Regulation D of the Securities Act. As a result, periodic tender offers are the only means for shareholders to sell their shares.

To enhance the liquidity of these shares, NPM proposes to allow Eligible Investors (defined below) to buy and sell shares of Auction Funds in periodic liquidity programs structured as auctions ("**Auctions**").

The Auctions will take place over a specified period of time during which all eligible buy and sell orders will clear, as described more fully below. There will not be continuous trading of Auction Fund shares on the Alternatives Platform.

Alternatives Platform participants will include registered broker-dealers, SEC- and state-registered investment advisers, advisers that have filed as exempt reporting advisers with the SEC, and institutional investors that are "qualified institutional buyers," as defined in Rule 144A under the Securities Act ("**QIBs**"). These participants will be called platform participants ("**Platform Participants**").

Investors that may purchase or sell a position in an Auction Fund through the Alternatives Platform are considered "**Eligible Investors**." Eligible Investors must be at least "accredited investors," as defined in Rule 501 of Regulation D of the Securities Act. Eligible Investors that do

[2] As an ATS and a broker-dealer, NPM Securities, LLC is registered with the SEC and a member firm of FINRA. Under FINRA Rule 1017, member firms must submit certain changes in ownership, control or business operations for advance approval by FINRA.

not qualify as Platform Participants will not be able to engage directly in transactions on the Alternatives Platform and must instead be represented by a Platform Participant. A QIB that is not a registered broker-dealer, registered investment adviser, exempt reporting adviser, or other financial intermediary and that has been approved by NPM as a Platform Participant may engage directly in transactions on the Alternatives Platform but may only purchase and sell interests for its own account.

## II. BENEFITS OF THE ALTERNATIVES PLATFORM FOR FUNDS

NPM expects the Alternatives Platform to offer the following benefits to Funds and their shareholders:

- The Alternatives Platform is designed to provide investors with an opportunity for an efficient and transparent secondary trading market for the Auction Funds, allowing for additional liquidity for Fund investors.
- The features of the Alternatives Platform are designed to help ensure the stability, efficiency and transparency of this segment of the market, which would allow Auction Fund investors to have confidence trading on the platform.
- The Alternatives Platform will not expand the group of investors that can currently buy and sell Auction Fund interests, but will simply provide this group with the potential for a secondary market enhancing the efficiency of transactions in Auction Fund interests and enhanced liquidity of Auction Fund interests.
- The Alternatives Platform will be subject to the supervision of and review by the SEC and FINRA as it will be operated by a registered broker-dealer and ATS.
- The Alternatives Platform may improve the portfolio management processes of Funds and potentially reduce costs to investors. By providing an alternative means for Fund investors to sell their shares, such funds may not need to engage in tender offers, which may reduce the amount of cash or cash equivalents that the Funds need to hold in order to fund those repurchases.

## III. OVERVIEW OF AUCTION FUND AUCTION PROCESS

In the context of Auction Funds, NPM will conduct Auctions on the Alternatives Platform among Eligible Investors that are facilitated by a designated liquidity provider ("**DLP**"). NPM will select one or more DLPs for each Auction. DLPs will be selected by NPM based on willingness to agree to established liquidity obligations specific to an Auction that are established by NPM with input from market participants. Funds and affiliated purchasers, as defined in Rule 100 of Regulation M, will not have any involvement in establishing Auction parameters, including DLP obligations, or in selecting DLPs. The DLP will not receive any compensation for serving as DLP from any other party, including NPM.

Each Auction consists of four distinct periods: (1) configuration; (2) order entry;[3] (3) finalization; and (4) closing.

Configuration. During this period, NPM sets the Auction's parameters based on technical needs and regulatory requirements, investors' interests, limitations on minimum investment size set forth in an Auction Fund's prospectus or offering document, and feedback from market participants, not including the Fund or affiliated purchasers which will have no role in establishing the parameters of the Auction.

Order Entry. Buyers and sellers submit limit orders during this period. All buyer and seller orders can be cancelled or modified without restriction prior to the closing of this period.

NPM will require Auction Funds to disseminate their prior month NAV during this period to all Platform Participants.[4] In addition, if the Auction involves the securities of a Tender Offer Fund, NPM will require the Tender Offer Fund to disseminate the results of its most recent Tender Offer during this period to all Platform Participants. NPM will require such information to be disseminated to all Platform Participants at a time sufficiently prior to the end of the order entry period so that Platform Participants have adequate time and the ability to adjust their buy and sell orders based on that data. As a condition to being a Platform Participant, NPM will require Platform Participants in turn to communicate such information to the Eligible Investors they represent, if applicable, similarly allowing adequate time and the ability for such Eligible Investors to adjust their buy and sell orders in

[3] Orders entered in the Auction could be submissions of indication of interest to buy or sell.

[4] NPM anticipates that Auction Funds will calculate their NAV no less frequently than on a monthly basis. To the extent that an Auction Fund calculates it more frequently, NPM will require the Auction Fund to disseminate its most recently calculated NAV.

response to such information prior to the end of this period. NPM will notify Platform Participants of this obligation during each Auction after the Fund disseminates such information.

Finalization. During this period, a clearing price and share allocations are determined based on a pre-defined order allocation algorithm.

The only orders that are executable in the Auction are buy orders that are priced at or higher than the clearing price and sell orders that are priced at or lower than the clearing price ("**executable orders**"). All executable orders in the Auction are executed at the clearing price to the extent they are matched on the other side. To the extent that unexecuted sell side interest exists after the clearing price has been set and all executable orders have been matched, NPM will have sole discretion to agree to allow the Auction Fund to direct pending subscriptions to be matched with unexecuted sell side orders. Pending subscriptions will not be used to determine the clearing price. However, in the event that a clearing price cannot be determined due to a lack of executable buy interest, NPM will have sole discretion to agree to allow pending subscriptions to cross with any existing unexecuted sell interest at the most recently provided NAV. The algorithm provides further support for secondary functions including the management of tie breaking, Fund-specific limitations on investment sizes, and others.

Closing. During this period, matched buy and sell orders are executed and each executed transaction is recorded. SMTX, Inc., a registered broker dealer and affiliate of NPM, will act as paying agent in the context of wiring the payment from buyers to sellers. Execution reports are provided to all participants by NPM. A closing schedule is provided to the Fund or the Fund's transfer agent by NPM. The transfer agent, once payment has been made, will close the transactions by updating the books and records of the Fund to reflect new ownership.

Funds and affiliated purchasers of the Fund will not participate, directly or indirectly, in Auctions, other than the potential for directing pending subscriptions to NPM, as discussed above, and will not assist in setting Auction terms, except as to minimum Fund investment parameters that appear in a Fund's prospectus or offering document.

## IV. DISCUSSION

Rule 102 of Regulation M, which is intended to preclude manipulative conduct by those with an interest in the outcome of a distribution, prohibits an issuer or its affiliated purchasers from bidding for or purchasing covered securities while those securities are being offered (i.e., during the securities' restricted period). Notwithstanding the general prohibition of Rule 102, Rule 102(b)(2)(i) permits transactions by a closed-end investment company that comply with Rule 23c-3 of the 1940 Act;[5] and Rule 102(b)(2)(ii) permits a closed-end investment company that engages in a continuous offering to make periodic tender offers under Exchange Act Rule 13e-4, if fund interests are not traded on a securities exchange or through an inter-dealer quotation system or electronic communications network. Due to the fact that Funds are engaged in a continuous offering, they are deemed to be involved in a continuous distribution for purposes of Regulation M. We understand that, absent the exemption requested in this letter, a Tender Offer Fund (or a Master Fund or Feeder T fund) may not be able to rely on the exception in Rule 102(b)(2)(ii) for its tender offers if Auctions in the securities of the Tender Offer Fund (or the related Feeder A fund) also are conducted.

Accordingly, NPM seeks exemptive relief from Rule 102 for the following models for new and existing Funds that would allow such Funds to conduct tender offers and also have their interests (or the interests of their related Feeder A funds) traded in periodic Auctions on the Alternatives Platform.[6]

### A. Testing the Waters Transition Period for Existing Funds from Tender Offers to Auctions

Under the "testing the waters" transition model, existing Tender Offer Funds would have the ability to gradually transition their investors to an Auction-only environment. The proposed model would allow the Fund's board to introduce the option of liquidity through Auctions to investors while temporarily maintaining tender offers as a choice for liquidity for investors until the end of a transition period. Under the proposed model, an existing Tender Offer Fund would initiate a temporary two-year transition period, starting with the opening of the tender offer prior to the first Auction, during which tender offers and Auctions would both be offered, with certain buffer periods between the two different forms of liquidity events. Specifically, in year one of the transition period, NPM would impose a 30-day buffer period between the end of a tender offer and the commencement of the following Auction, with no more than four (4) tender offers in year one. In year two of the transition period, the buffer period would be extended to 60 days between the end of a tender offer and the commencement of the following Auction, and 60 days between the end of an auction that takes place

[5] NPM is not seeking relief from Regulation M for existing and new Funds that engage in transactions complying with Rule 23c-3 of the 1940 Act, in reliance on Rule 102(b)(2)(i), to use the Alternatives Platform to provide Auctions to their investors. We note that any of the Funds discussed in the models presented herein and Auction-only Funds may be able to engage in repurchases once every two years as permitted by Rule 23c-3(c), in reliance on Rule 102(b)(2)(i).

[6] NPM recognizes that Funds participating in periodic Auctions on the Alternatives Platform may be required by the federal securities laws and rules to disclose details regarding Auctions and the risks of participating in Auctions.

in year 2 and the commencement of the following tender offer, with no more than two tender offers in year two. NPM would also require that shares that have already been committed by an investor to sell in a tender offer ("committed shares") would not be eligible to be bought or sold in the following Auction, unless at the closing of the tender offer, the investor was unsuccessful in tendering such committed shares in that tender offer. The opposite would also be true, so that shares that have been committed to an Auction would not be eligible to participate in the following tender offer to the extent that such shares have been matched in the Auction and are pending closing of the Auction.

In addition, in order to promote transparency and alleviate concerns relating to information asymmetry among participants in a tender offer versus an Auction, NPM would require that a Tender Offer Fund disclose the results of the previous tender offer and prior month NAV to all Platform Participants and, in turn, Eligible Investors if applicable, in the following Auction. This information will be communicated to Platform Participants and Eligible Investors (which may be via Platform Participants representing them, as applicable) participating in the Auction at a time sufficiently prior to the end of the order entry period so that they have adequate time and the ability to adjust their buy and sell orders based on that data. Furthermore, during the transition period, NPM will require that each Tender Offer Fund agree to make available the results of the previous Auctions occurring within the last 12-month period, if any, in the Fund's securities promptly following the closing of each Auction (and, if available, at a time sufficiently prior to the end of the order entry period for the next Auction) to investors who are eligible to subscribe for securities in the Fund and to existing investors in such Fund. The results of the previous Auctions to be made available will include, to the extent applicable, the clearing price of each Auction (both in dollars and in discount to the most recent NAV), the total amount of securities purchased in each Auction, and the percentage of the securities purchased represented by subscriptions that were forwarded to the Auction, as opposed to represented by non-subscription buy side interest.[7]

The goal of the proposed model will be that existing and newly formed Tender Offer Funds would have the ability to transition to an Auction-only Fund at the end of the two-year transition period. Auctions would incrementally replace tender offers during the two-year transition period, as provided in this request and as determined by the Fund's board. At the end of the second year, the Fund would either continue as an Auction-only Fund, or, if the board determines, convert back to a Tender Offer Fund.

The transition period exemptive relief would be available to a Tender Offer Fund on a one-time basis only. Thus, any Tender Offer Fund that has converted to an Auction-only model and subsequently withdraws from the Auction-only model, whether during or at the end of the transition

[7] Such data may be made available through a password protected website and subject to a reasonable fee payable by the Fund and/or its distributor(s) to NPM.

period, or at any time thereafter, would not be permitted to use this exemption to enter another transition period at a later date. In addition, NPM will not conduct an Auction for a Tender Offer Fund's securities after the board of the Fund that has converted to an Auction-only model determines, whether during or at the end of the transition period, or at any time thereafter, to convert the Fund back to making tender offers only.

To allow Tender Offer Funds the ability to transition during the proposed two-year "test the waters" transition period, we request that the Commission grant an exemption from Rule 102 to permit Tender Offer Funds that continuously offer their securities (and, therefore, are deemed to be in an ongoing distribution for purposes of Regulation M), to engage in periodic tender offers of their securities under Exchange Act Rule 13e-4 while such securities are also traded on the Alternatives Platform, in the manner described above.

Given the anticipated benefits that the Auction should provide to investors, NPM believes that exemptive relief is appropriate in the public interest and consistent with the protection of investors. Specifically, with the availability of an Auction, shareholders of the Tender Offer Funds will be given access to a program designed to provide the opportunity for enhanced liquidity in their shares and potentially not have to wait for a Fund's periodic tender offers before they are able to sell their shares. The Auction could also serve as a valuable liquidity mechanism for investors in times of market stress if a Tender Offer Fund is not able to make its periodic tender offers. We also believe that the following conditions placed during the transition period will help minimize the impact of tender offers on the secondary market for the securities in the Tender Offer Fund, help protect the integrity of the secondary trading market as an independent pricing mechanism, and enhance investor confidence in the marketplace for these securities. Specifically, we believe exemptive relief from Rule 102 is warranted because:

- There would only be a temporary two-year transition period during which the Tender Offer Fund would make tender offers as well as make its shares available for trading in Auctions on the Alternatives Platform, limiting the amount of time during which such Funds offer two different forms of liquidity;

- As described above, participation in the Auction would be limited to Eligible Investors that must be at least accredited investors;

- The ability of a Tender Offer Fund to gradually transition to an Auction-only Fund would provide investors traditional liquidity events in the form of tender offers, while also providing investors with the opportunity to experience the benefits of participating in an Auction on the Alternatives Platform and reduce their exposure to illiquidity risk;

- The buffer periods of thirty (30) days in year one and sixty (60) days in year two are designed to gradually decrease any effects that the one type of liquidity event might have upon the other;

- During the transition period, a Tender Offer Fund would disclose the results of its previous tender offer and its prior month NAV to Platform Participants and Eligible Investors (which may be via Platform Participants representing them, as applicable) participating in the following Auction at a time sufficiently prior to the end of the order entry period so that they have adequate time and the ability to adjust their buy and sell orders based on that data. In addition, NPM will require that the Tender Offer Fund agree to make available the results of the previous Auctions occurring within the last 12-month period, if any, in its securities promptly following the closing of each Auction (and, if available, at a time sufficiently prior to the end of the order entry period for the next Auction) to investors who are eligible to subscribe for securities in the Fund and to existing investors in such Fund; and

- The board of the Tender Offer Fund retains oversight of the Tender Offer Fund's transition from tender offer-only to Auction-only and the board ultimately decides whether to transition permanently to Auctions-only or offer only tender offers based on the overall success of the Auctions during or at the end of the two-year transition period.

### B. Dual Feeders with One-Time Exchange for New Funds

For newly formed Funds seeking to provide liquidity through Auctions and tender offers while complying with Rule 102 of Regulation M, NPM proposes that such new Funds be created as a Master Fund with two feeder funds, a Feeder A and a Feeder T. Like the Tender Offer Fund, the Master Fund, Feeder T, and Feeder A would be closed-end investment companies registered under the 1940 Act. The Master Fund and Feeder A will engage in continuous offerings of their shares, with subscriptions generally taking place on a monthly basis and will offer their shares at NAV.[8] Feeder A would disclose its prior month NAV to Platform Participants and Eligible Investors (which may be via Platform Participants representing them, as applicable) participating in the Auction at a time sufficiently prior to the end of the order entry period so that participants have adequate time and the ability to adjust their buy and sell orders based on that data. Investors in Feeder A would be able to participate in Auctions, and investors in Feeder T would be able to participate in tender offers offered by Feeder T, as their means of liquidity. In addition, Feeder A may periodically choose to participate in the Master Fund's tender offers if the board of directors of Feeder A determines that participation in the Master

[8] Feeder T will not engage in any offerings; the only way for investors to acquire shares of Feeder T is to exchange their Feeder A shares to Feeder T shares.

Fund's tender offer would be in the best interest of Feeder A and its shareholders.[9] In any event, tender offers for Feeder A shares offered by Feeder A or any affiliated purchaser would only be permitted if excepted from Rule 102 of Regulation M because the tender offer complies with Rule 102(b)(2)(i).[10]

If investors in Feeder A are unsatisfied with the liquidity in the Auctions, they would be able to exchange their interests in Feeder A for interests in Feeder T on the basis of the relative NAVs of the securities to be exchanged. An exchange would be one-time and permanent. An investor seeking to exchange from Feeder A to Feeder T would be required to wait no less than three (3) months between requesting that Feeder A make the exchange and receiving interests in Feeder T.[11] Interests in Feeder T could not be exchanged for interests in Feeder A.

Although none of the Master Fund or the two feeders will individually engage in tender offers and Auctions simultaneously, NPM seeks exemptive relief from Rule 102 to allow the Master Fund and Feeder T to conduct tender offers while Feeder A offers liquidity through Auctions on the Alternatives Platform. NPM believes that such relief is appropriate in the public interest and consistent with the protection of investors because of controls and practices that would be implemented:

- There would be a division between investor participation in tender offers and Auctions through the existence of separate feeder funds for each liquidity event, thereby reducing the possibility that the existence of tender offers would impact activity in the Auctions;

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[9] In making this determination, the board of Feeder A would consider the following factors, among others: whether any shareholders have requested to tender interests in Feeder A; the number of shareholders which have exchanged their interests from the Feeder A to Feeder T; the composition and liquidity of the Master Fund's assets (including fees and costs associated with withdrawing from Master Fund investments); the availability of information as to the value of each of the Master Fund's interests in underlying investments; whether monthly Auctions have provided adequate liquidity and competitive market pricing for participating investors; the condition of the securities markets and the economy generally, as well as political, national or international developments or current affairs; the anticipated tax consequences of any proposed repurchases of interests by Feeder A; and the recommendation of Feeder A's investment adviser.

[10] See note 5, above.

[11] Feeder A investors would deliver their interests to Feeder A. Feeder T would issue Feeder T interests to the exchanging Feeder A investor in exchange for Feeder A's portfolio assets on the basis of relative NAVs. All transactions would be effected as of a date no less than three (3) months from the date that the Feeder A investor requested the exchange from Feeder A to Feeder T.

- Tender offers for Feeder A shares offered by Feeder A would only be permitted if excepted from Rule 102 of Regulation M because the tender offer complies with Rule 102(b)(2)(i);

- NPM would require an investor seeking to exchange from Feeder A to Feeder T to wait no less than three (3) months between requesting that Feeder A make the exchange and receiving interests in Feeder T. Such a significant waiting period would reduce the effects that one type of liquidity event might have upon the other;

- The investor could only exchange one time, in one direction, permanently, from Feeder A to Feeder T, thereby limiting the effects that the one type of liquidity event might have upon the other.

- Feeder A would disclose its prior month NAV to Platform Participants and Eligible Investors (which may be via Platform Participants representing them, as applicable) participating in the Auction at a time sufficiently prior to the end of the order entry period so that participants have adequate time and the ability to adjust their buy and sell orders based on that data. In addition, NPM will require that Feeder A agree to make available the results of the previous Auctions occurring within the last 12-month period, if any, in its securities promptly following the closing of each Auction (and, if available, at a time sufficiently prior to the end of the order entry period for the next Auction) to investors who are eligible to subscribe for securities in Feeder A and to existing investors in such Feeder A. The results of the previous Auctions to be made available will include, to the extent applicable, the clearing price of the previous Auction (both in dollars and in discount to the most recent NAV), the total amount of securities purchased in such Auction, and the percentage of the securities purchased represented by subscriptions that were forwarded to such Auction, as opposed to represented by non-subscription buy side interest.[12]

- The securities of the Master Fund and the Feeder T fund will not trade on any secondary market.

## V. CONCLUSION

For these reasons, NPM requests the Commission to provide an exemption from Rule 102 of Regulation M that would allow the Auction Funds to make Auctions available to their investors while

[12] See note 7, above.

also making tender offers (or while their related Master Funds or Feeder T funds make tender offers), in the manner described above.

Please contact the undersigned at (202) 973-8809 if you have any questions or would like to discuss this request.

Sincerely,

Susan Gault-Brown (KCC)

Susan Gault-Brown