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Ms. Joanne Rutkowski
Assistant Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Class Exemptive, Interpretive or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934

Dear Ms. Rutkowski:

ActiveShares[®] ETF Trust (the “**Trust**”) is an open-end management investment company organized on October 22, 2019 as a Maryland statutory trust. The Trust is currently comprised of one series, the ClearBridge Focus Value ETF (the “**Initial Fund**”).

On May 20, 2019, the Securities and Exchange Commission (the “**Commission**”) issued an exemptive order (the “**ActiveShares[®] Order**”) under the Investment Company Act of 1940, as amended (the “**1940 Act**”), to Precidian Funds LLC (the “**Initial Adviser**”), the Precidian ETF Trust and Precidian ETF Trust II, which provides for operation of actively managed exchange-traded funds (“**ETFs**”) that do not provide daily portfolio holdings disclosure.¹ The Trust on behalf of itself, the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof offered pursuant to the ActiveShares[®] Order or other orders granted by the Commission that are substantially similar to the ActiveShares[®] Order (“**Similar Orders**”) ² and that seek to rely upon the relief requested herein and adheres to the representations and conditions in this letter (“**Future Funds**”³ and together with the Initial Fund, the “**Funds**”), and any national securities exchange or national securities association on or through which the shares subsequently trade (each such market being an “**Exchange**”), and persons or entities engaging in

¹ Precidian ETFs Trust, et al., Investment Company Act Rel. No. 33477 (May 20, 2019).

² See, e.g., American Century ETF Trust, et al., Investment Company Act Rel. No. 33620 (September 10, 2019).

³ Any Future Fund will be an open-end investment company that is an actively-managed ETF operating in compliance with the terms and conditions of this letter and the ActiveShares[®] ETF Order or any Similar Order.

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transactions in shares issued by the Funds (“**Shares**”), as applicable, requests that the Commission grant class exemptive, interpretive or no-action relief from Section 11(d)(1) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), in connection with secondary market transactions in Shares and the creation and redemption of Creation Units, as discussed below.⁴

I. Summary of Request for Relief

Initially, the Trust intends to issue and redeem Shares of the Initial Fund in aggregations of 20,000 or more Shares (“**Creation Units**”), with a minimum market value of \$100,000. The Trust has filed a registration statement on Form N-1A and the Shares of the Initial Fund will be listed on Cboe BZX Exchange, Inc.⁵ The Trust is overseen by a board of trustees (the “**Board**”) that will maintain the composition requirements of Section 10 of the 1940 Act. The Funds will have adopted fundamental policies consistent with the 1940 Act. The Initial Fund is classified as “diversified” under the 1940 Act. Each Fund intend to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company diversification requirements of the Internal Revenue Code of 1986, as amended.⁶ The Funds will invest only in ETFs, Exchange-traded notes, Exchange listed common stocks,⁷ Exchange-traded preferred stocks, Exchange-traded American Depositary Receipts (“**ADRs**”),⁸ Exchange-traded real estate investment trusts (“**REITs**”), Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts and exchange-traded futures⁹

⁴ The Trust is not seeking relief from Rule 10b-17, but rather will rely upon and comply with the conditions of the Order granting an exemption from Rule 10b-17 to actively managed ETFs. Release No. 34-67215 (June 19, 2012). The Trust is also not seeking relief from Rules 10b-10, 15c1-5 or 15c1-6 because only an Authorized Participant (defined below), acting through an AP Representative (defined below), could purchase a portfolio security of a Fund as part of the creation and redemption process. Because an Authorized Participant is a broker dealer, it would not be a “customer” for purposes of Rules 10b-10, 15c1-5 or 15c1-6, and would not require relief from the confirmation or disclosure requirements of those rules.

⁵ If Shares are listed on another Exchange or admitted to trading, it would be in accordance with the other Exchange’s listing standards pursuant to Section 19(b) of the Exchange Act or pursuant to a grant of unlisted trading privileges.

⁶ But for the fact that the Funds are actively managed, rather than tracking the performance of a securities index, each of the Funds would be a “Qualifying ETF” as that term is used in the Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005) (the “**SIA Letter**”). Specifically, each Fund’s portfolio would consist of a basket of twenty or more portfolio securities, with no one security constituting more than 25% of the total value of the ETF.

⁷ Although the Funds may invest in securities of companies of various capitalizations, the Funds will not invest in “penny stocks,” as defined by Rule 3a51-1 under the Exchange Act.

⁸ 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.

that, in each case, trade on a U.S. Exchange contemporaneously with the Shares, as well as cash and cash equivalents.¹⁰ No Fund will borrow for investment purposes or hold short positions. The Funds also will not purchase any securities that are illiquid (as defined in Rule 22e-4(a)(8) under the 1940 Act) at the time of purchase. Finally, each Fund will be “exchange-traded fund” as that term is defined in Rule 6c-11 under the 1940 Act, but cannot otherwise rely on Rule 6c-11 and instead will operate in reliance on the ActiveShares® Order.¹¹

The Commission staff (“**Staff**”) has previously issued relief substantially identical to that requested herein to actively-managed ETFs (“**Prior Active ETFs**”),¹² as well as index-based ETFs (“**Prior Index ETFs**”),¹³ listed and traded on an Exchange which meet certain conditions. More recently, the Commission issued an exemptive order providing an exemption from, among other things, Section 11(d)(1) of the Exchange Act for ETFs that comply with certain diversification requirements and rely on Rule 6c-11 under the 1940 Act.¹⁴ The Funds described herein operate in a manner similar to the Prior Active ETFs except, the Funds will not, on each

⁹ 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.

¹⁰ Cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

¹¹ Rule 6c-11 became effective on December 23, 2019. Investment Company Act Rel. No. 33646 (September 25, 2019).

¹² See Letter from Josephine Tao to Morgan, Lewis & Bockius LLP, dated June 16, 2011 (the “**Morgan Lewis Letter**”); and Letter from Josephine Tao to Wisdom Tree Trust, dated May 9, 2008 (the “**Wisdom Tree Letter**”). In the WisdomTree Letter, the Staff stated that it has repeatedly expressed its views on Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 with respect to ETFs that are not tied to an index. The Staff stated that it therefore would not respond to requests for relief under Section 11(d)(1) or Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 relating to ETFs that are not managed to track a particular index unless they present novel or unusual issues. In the Morgan Lewis Letter, in the context of an actively managed ETF that presented a novel issue not contemplated in the WisdomTree Letter, the Staff again stated they would not respond to requests for relief under Section 11(d)(1) or Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 relating to ETFs that are not managed to track a particular index and are comprised of underlying ETFs unless they present novel or unusual issues. See also Staff Legal Bulletin No. 9 (Revised September 10, 2010) (“**SLB-9**”). In SLB-9 the Staff expressed the position that the Rule 101(c)(4) and Rule 101(d)(3) exceptions of Regulation M were available to actively managed ETFs if certain conditions were met.

¹³ See Equity ETF Class Relief Letter; SIA Letter; Letter from James A. Brigagliano, Assistant Director, Division of a Regulation to American Stock Exchange LLC (“**AMEX**”), dated August 17, 2001. See also Letter from James A. Brigagliano regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007; Letter from Josephine Tao regarding Combination Exchange-traded Funds, dated June 27, 2007.

¹⁴ Exchange Act Release No. 87110 (effective December 23, 2019). As noted above, the Funds are not able to rely on Rule 6c-11, and therefore cannot comply with conditions of this exemptive order.

Business Day (defined below), prior to the opening of the New York Stock Exchange, Inc. (“NYSE”), disclose on the Funds’ website, the identities and quantities of the securities and other assets held by a Fund (the “**Portfolio Securities**”) that will form the basis for each of the Funds’ calculation of net asset value (“NAV”) at the end of the Business Day.¹⁵ Instead, unlike the Prior Active ETFs and Prior Index ETFs (together, the “**Prior ETFs**”), which publish an indicative intraday value every 15 seconds throughout the trading day, the Funds will calculate and disseminate through the facilities of the Consolidated Tape Association a verified indicative intraday value (“VIIV”) every second throughout the trading day.¹⁶ Because the Funds will not disclose their current Portfolio Securities on a daily basis, there is one additional material difference in the operation of the Funds compared to all Prior ETFs - in connection with the purchase or redemption of Creation Units, the delivery of any Portfolio Securities in-kind will be effected through a Confidential Account (defined below) with an AP Representative (defined below) for the benefit of the purchasing or redeeming Authorized Participant (as described below) without disclosing the identity of such Portfolio Securities to the Authorized Participant, or anyone else. Because the daily disclosure of Portfolio Securities was a key representation in the WisdomTree Letter and a condition to the positions expressed in SLB- 9, the Trust and the Funds believe they are not entitled to rely on the WisdomTree Letter or SLB-9 for relief. Further, because the Funds are not index-based ETFs, they are not entitled to rely on the relief previously provided to the Prior Index ETFs. The Trust notes, however, that this proposal - the creation and issuance by an investment company of shares that individually trade on an Exchange, but that can only be purchased from and redeemed with the issuing investment company in large aggregations, without requiring daily disclosure of the Portfolio Securities - is not novel. The Commission has in the past considered and approved many similar proposals - for the Prior Index ETFs.¹⁷ For the Prior Index ETFs, of course, market participants do have access to information about the

¹⁵ As with all registered open-end, management investment companies, the Funds will disclose their portfolio holdings quarterly, with not more than a 60-day lag.

¹⁶ The Exchange on which a Fund is primarily listed will disseminate the VIIV for each Fund in one-second intervals during regular trading hours, through the facilities of the Consolidated Tape Association.

¹⁷ The Commission or the Staff has previously granted exemptive or no-action relief under Rules 11d1-2 and Regulation M under the Exchange Act similar to that requested here. *See e.g.*, Letter from Nancy Sanow, Assistant Director, Division of Market Regulation to AMEX, dated January 22, 1993 with respect to trading of SPDR Trust, Series I; Letter from Nancy Sanow, Assistant Director, Division of Market Regulation to AMEX, dated April 21, 1995 with respect to trading of MidCap SPDR Trust; Letters from Larry E. Bergman, Senior Associate Director, Division of Market Regulation to Gordon Altman Butowsky, dated December 14, 1998 and December 22, 1998, respecting the trading of the Select Sector SPDR Trust; Letter from James Brigagliano, Assistant Director, Division of Market Regulation to AMEX, dated March 3, 1999 with respect to the trading of the Nasdaq 100 Trust; Letter from James Brigagliano, Assistant Director, Division of Market Regulation to Carter, Ledyard & Milburn dated May 16, 2000 with respect to the trading of the iShares Trust; Letter from James Brigagliano, Assistant Director, Division of Market Regulation, to Mayer, Brown & Platt dated September 26, 2000 with respect to the trading of the streetTRACKS® Series Trust; Letter from James Brigagliano, Assistant Director, Division of Market Regulation to Morgan, Lewis & Bockius LLP dated July 25, 2002 with respect to the trading of various series funds of the iShares Trust.

underlying index, including the index components and index performance, as well as knowledge of the underlying basket of securities in any creation or redemption. Market participants would not, however, know the actual portfolio holdings unless the Prior Index ETF made that information available voluntarily.

The Funds cannot represent that “on each Business Day, prior to the opening of the NYSE, each Fund will disclose on the Funds’ website, the identities and quantities of the Portfolio Securities held by the Fund that will form the basis for each of the Funds’ calculations of NAV at the end of the Business Day.” Further, an Authorized Participant engaging in creations or redemptions would have no knowledge of, and similarly be unable to disclose, the Portfolio Securities. Nonetheless, the Funds otherwise can comply with conditions and representations included in the WisdomTree Letter and SLB-9. Like all Prior ETFs, the price of Shares of the Funds will be disciplined by arbitrage opportunities created by the ability of Authorized Participants to purchase or redeem Creation Unit Aggregations at NAV,¹⁸ which should ensure that Shares of the Funds do not trade at a material premium or discount in relation to NAV. Unlike the Prior Active ETFs, the Funds do not rely on the daily disclosure of Portfolio Securities to assure that market participants will know when Shares of the Funds are trading at a premium or discount. Instead, the Funds will rely on the publication of the underlying value of a Share throughout the day that will allow market participants to compare the market price of a Share with the underlying value of the Share. The Funds will disseminate a VIIV every second throughout the trading day through the facilities of the Consolidated Tape Association. Thus, the VIIV will be available to all market participants, allowing investors to compare the underlying value of each Fund’s Shares to the market price. The VIIV will provide Authorized Participants with the information that, when combined with the ability to create and redeem Shares using a Creation Basket (defined below) that is a pro rata slice of the Fund’s portfolio, gives them the ability to take advantage of any slight premium or discount in the market price of Shares, which should, as with Prior ETFs, ensure that the Shares will trade at a market price at, or close to, the NAV per Share of the Fund. Because the Funds will provide for an effective arbitrage mechanism that is different from, but analogous to, the Prior Active ETFs that received relief from the Commission, we believe that the relief provided in the WisdomTree Letter and the position taken in SLB-9 should be extended to the Funds.

II. The Initial Fund

The Shares of the Initial Fund will be issued by the Trust, a statutory trust organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company. The investment adviser to the Initial Fund will be the Initial Adviser. The Funds will issue and redeem Shares in Creation Units through a broker-dealer

¹⁸ Unlike Prior ETFs, Authorized Participants will only be permitted to transact with the Funds through an AP Representative (defined below), which will serve as an agent for the Authorized Participant. Nonetheless, as with all Prior ETFs, Authorized Participants will be able to indirectly create and redeem Shares at NAV.

registered under the Exchange Act (the “**Distributor**”) acting on an agency basis and serving as each Fund’s “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act.

The Initial Fund seeks long-term capital appreciation. Under normal circumstances, the Initial Fund will invest at least 80% of its net assets in equity securities, or other Exchange-traded investments with similar economic characteristics in which it is permitted to invest, of companies with large market capitalizations. Large capitalization companies are those companies with market capitalizations similar to companies in the Russell 1000 Index (the “**Index**”). The size of the companies in the Index changes with market conditions and the composition of the Index. Securities of companies whose market capitalizations no longer meet this definition after purchase by the Initial Fund still will be considered securities of large capitalization companies for purposes of the Initial Fund’s 80% investment policy. The Initial Fund may also invest up to 20% of its net assets in equity securities, or other Exchange-traded investments with similar economic characteristics in which it is permitted to invest, of companies with lower market capitalizations. While most of the Initial Fund’s investments will be in U.S. companies, the Initial Fund may also invest in ADRs and U.S.-listed shares of foreign companies. The Initial Fund will only invest in instruments that trade on a U.S. Exchange contemporaneously with the Initial Fund’s Shares and, for temporary or defensive purposes, in cash and cash equivalents, such as short-term U.S. Treasury securities, government money market funds, and repurchase agreements. Under normal circumstances, the Initial Fund will invest in a diversified portfolio typically consisting of the securities of 30 to 40 issuers.

III. **Operation of the Funds**

As discussed above, each Fund will issue and redeem its Shares only in Creation Units. Creation Units may be purchased solely through the Fund’s distributor by an “**Authorized Participant**” which is a broker-dealer that is either (1) a participant (each a “**Participating Party**”) in the Continuous Net Settlement (“**CNS**”) System of the National Securities Clearing Corporation (“**NSCC**”), a clearing agency registered with the Commission and affiliated with DTC (defined below), or (2) a DTC Participant (defined below), which in either case has executed an agreement with the Distributor with respect to creations and redemptions of Creation Units (“**Participant Agreement**”) and a Confidential Account Agreement (defined below) with an AP Representative (defined below). Shares will not be individually redeemable; only Shares combined into Creation Units will be redeemable. The Trust intends that the initial NAV per Share will be established at a level convenient for trading purposes and, as discussed herein, that would prevent market participants from identifying the portfolio constituents and their weightings. Purchasers of Creation Units will be able to unbundle the Creation Units into the individual Shares comprising such Creation Unit. The Exchange upon which the Shares are listed will designate one or more member firms to act as a “**Lead Market Maker**” responsible for maintaining depth and quality of trading in the Shares. The Lead Market Maker has quote

and execution obligations and the responsibility for keeping tight spreads in the Shares.¹⁹ The Shares will trade on the Exchange in a manner similar to the shares of the Prior ETFs.

Each shareholder will have one vote per Share with respect to matters regarding the Trust or the Fund for which a shareholder vote is required, consistent with the requirements of the 1940 Act, the rules promulgated thereunder, and state laws applicable to Maryland statutory trusts.

Shares will be registered in book-entry form only and the Funds will not issue Share certificates. The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York (“**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 (“**DTC Participants**”). Shareholders will exercise their rights in such securities indirectly through the DTC and DTC Participants. The references herein to owners or holders of such Shares shall reflect the rights of persons holding an interest in such securities as they may indirectly exercise such rights through the DTC and DTC Participants, except as otherwise specified. No shareholder shall have the right to receive a certificate representing Shares. 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.

A. The Confidential Account Structure

Each Fund will identify one or more registered broker-dealers to enter into a contractual arrangement with the Fund to serve as an “**AP Representative**.” Each Authorized Participants will establish and maintain an account with an AP Representative for the benefit of the Authorized Participant in order to engage in in-kind creation and redemption activity (a “**Confidential Account**”). Each day, the custodian to a Fund (the “**Custodian**”) will transmit the composition of the Fund’s Creation Basket (defined below) to each AP Representative. Pursuant to a contract (the “**Confidential Account Agreement**”), the AP Representative will be restricted from disclosing the Creation Basket (defined below). In addition, the AP

¹⁹ The Initial Adviser believes that market makers and other liquidity providers will employ risk-management techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in ETFs. The hedging methodology that each market maker or other liquidity provider chooses to employ is determined by multiple parameters such as amount of capital at risk, net position – the unhedged portion of their position, market conditions, such as volatility and liquidity, and capital availability and cost. These and other factors are used by a market maker to determine their risk tolerance and therefore the desired hedging techniques they can use to manage their risk to a reasonable level. Because market makers are expected to be able to construct a very good hedge portfolio for any position they take in Shares and evaluate profit and loss on their position, the Initial Adviser believes that there will be many Authorized Participants and other market makers that will seek to make a market in Shares.

Representative will undertake an obligation not to use the identity or weighting of the securities in the Creation Basket (defined below) for any purpose other than executing creations and redemptions for a Fund.²⁰ The Confidential Account will enable Authorized Participant to transact in the underlying securities of the Creation Basket (defined below) through their AP Representative, enabling them to engage in in-kind creation or redemption activity without knowing the identity or weighting of those securities. Instead of knowing the identity of those securities, the Authorized Participant will know the aggregate value of those securities through the dissemination of the VIIV, will have a general knowledge of the types of securities in the Fund's portfolio because of prospectus and periodic report disclosure, and will have real time knowledge of the performance of all segments of the overall domestic equity market. Based on this information, Authorized Participants will provide execution instructions to the AP Representative. Acting on execution instructions from an Authorized Participant, the AP Representative will purchase or sell the securities in the Creation Basket (defined below) for purposes of effecting in-kind creation and redemption activity during the day.²¹ Authorized Participants are responsible for all order instructions and associated profit and loss.²²

For reporting purposes, the books and records of the Confidential Account will be maintained by the AP Representative and provided or made available to the appropriate regulatory agency as required. The Confidential Account Agreement, like any account agreement, will be negotiated between the parties and should be similar in cost to other brokerage arrangements.

Authorized Participants have the ability to facilitate efficient market making in the Shares, as well as add and decrease liquidity, through the creation and redemption process.

B. Sales and Redemption of Shares

The issuance and redemption of Shares will operate in a manner substantially identical to that of the ETFs that are the subject of prior Commission orders. Shares of each Fund will be issued and redeemed in Creation Units of 5,000 or more Shares. The Funds will offer and

²⁰ In selecting broker-dealers to serve as AP Representatives, a Fund will obtain, both initially and each year thereafter, representations from the entity related to the confidentiality of the Fund's Creation Basket, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. Further, the contractual arrangement will require that the AP Representative will stay in place until another AP Representative has been engaged by the Fund.

²¹ Each Confidential Account Agreement will provide that neither the AP Representative nor its affiliated persons, acting as principal, may sell or purchase the actual securities that the AP Representative is purchasing or selling, respectively, on behalf of the Authorized Participants. Further, the Confidential Account Agreement will provide that the Confidential Account may never hold securities positions at the end of a day.

²² Authorized Participants will be able to monitor the execution quality of the AP Representative by comparing the price at which they purchase or sell Creation Baskets (defined below) with the VIIV and the end of day NAV.

sell Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. As required by law, redemption requests in good order will receive the NAV per Share next determined after the request is received in proper form. Subject to approval by the Board, it is anticipated that the NAV per Share of each Fund will be determined as of the scheduled closing time of the regular trading session on the NYSE on each “**Business Day**,” which is defined as any day that the Fund is open, including any day when it satisfies redemption requests as required by Section 22(e) of the 1940 Act. The Funds will sell and redeem Creation Units only on Business Days. The Trust anticipates that the price of a Share will range from \$20 to \$60, and that the price of a Creation Unit will range from \$100,000 to \$300,000.

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. In the case of a creation, the Authorized Participant, as a principal,²³ would enter into an irrevocable creation order with the Fund and then direct the AP Representative to purchase the necessary Deposit Instruments (defined below). The AP Representative would then purchase such securities in the Confidential Account and then deliver them in-kind to the Fund.²⁴ In the case of a redemption, the Authorized Participant would enter into an irrevocable redemption order with the Fund and then the Fund would instruct its Custodian to deliver the Redemption Instruments (defined below) to the appropriate Confidential Account.²⁵ The Authorized Participant would direct the AP Representative on when that day to liquidate those securities.²⁶

²³ Because an Authorized Participant can only transact as principal with a Fund, customers of the Authorized Participant will not be able to participate in transactions in Creation Units using an Authorized Participant as its agent. Instead, we believe transactions in Creation Units by customers of an Authorized Participant would be executed on a riskless principal basis. With respect to Prior ETFs, we understand that most, in not all, transactions in Creation Units by customers of Authorized Participants are also done on a riskless principal basis. Nonetheless, because the Authorized Participant cannot act as an agent, this could theoretically reduce the number of participants, as compared to Prior ETFs, in the creation and redemption market.

²⁴ We anticipate that the AP Representative would enter into the purchase transaction on trade date (T) and the Authorized Participant would transfer cash in an amount sufficient to cover the purchase price to its Confidential Account with the AP Representative on T+1. The purchase of the Deposit Instruments (defined below) would settle on T+2, as would the purchase of the Creation Unit, in exchange for the Deposit Instruments. Similarly in a redemption, the Authorized Participant would transfer a Creation Unit of Shares to its Confidential Account with the AP Representative, which would transact directly with the Fund as agent for the Authorized Participant, before settlement of the redemption transaction.

²⁵ The terms of the Confidential Account will be set forth as an exhibit to the Participant Agreement, which will be signed by each Authorized Participant. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of Brokers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²⁶ All income, gain or loss realized by a Confidential Account will be directly attributed to the Authorized Participant for that Confidential Account. In a redemption, the Authorized Participant will have a basis in the

In purchasing or selling such securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket (defined below).²⁷

Accordingly, except where the purchase or redemption will include cash under the limited circumstances specified below, Authorized Participants, through the AP Representative, will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“**Deposit Instruments**”), and the AP Representative, acting on behalf of an Authorized Participant that is redeeming Shares will receive an in-kind transfer of specified instruments (“**Redemption Instruments**”). On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments correspond pro rata to the positions in the Fund’s portfolio (including cash positions) and, thus, will be identical. These instruments may be referred to, in the case of either a purchase or a redemption, as the “**Creation Basket**.” Each Creation Basket will apply until a new Creation Basket is provided on the following Business Day, and there will be no intra-day changes to a Creation Basket except to correct errors in that day’s Creation Basket.

As with Prior ETFs, 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 (“**Balancing Amount**”).

Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, solely under the following circumstances:

- (a) to the extent there is a Balancing Amount, as described above;
- (b) if, on a given Business Day, the Fund publically announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash;
- (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;

distributed securities equal to the fair market value at the time of the distribution and any gain or loss realized on the sale of those Shares will be taxable income to the Authorized Participant.

²⁷ Using such different methods is standard practice today and therefore, should not lead to any material increase in brokerage costs.

(d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because such instruments are not eligible for transfer through either the NSCC Process or DTC Process (each as defined below); or

(e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; or (ii) such instruments are not eligible for trading by an Authorized Participant.

C. Settlement Process

All orders to purchase and redeem Creation Units must be placed with the Trust's transfer agent (the "**Transfer Agent**") or the Distributor by an Authorized Participant. Authorized Participants may be, but are not required to be, members of an Exchange.

Purchase and redemption orders must be in multiples of Creation Units. Purchase and redemption orders will be processed either through a manual clearing process or through an enhanced clearing process. The enhanced clearing process is available only to those DTC Participants that also are Participating Parties in the CNS System of the NSCC. The NSCC/CNS system has been enhanced specifically to effect purchases and redemptions of ETF securities, such as Creation Units of Shares. The enhanced clearing process ("**NSCC Process**") simplifies the process of transferring a basket of securities between two parties by treating all of the securities that comprise the basket as a single unit. By contrast, the manual clearing process ("**DTC Process**") involves a manual line-by-line movement of each securities position. Because the DTC Process involves the movement of potentially hundreds of securities, while the NSCC Process involves the movement of one unitary basket, DTC will charge a Fund more than NSCC to settle a purchase or redemption of Creation Units.

All orders to purchase and redeem Creation Units, whether through the NSCC Process or the DTC Process, must be received by the Transfer Agent or Distributor no later than the NAV calculation time ("**NAV Calculation Time**"), generally 4:00 p.m. ET on the date the order is placed ("**Transmittal Date**") in order to receive the NAV per Share determined on the Transmittal Date.²⁸ In the case of custom orders, the order must be received by the Transfer Agent or Distributor sufficiently in advance of the NAV Calculation Time in order to help ensure that the Fund has an opportunity to purchase the missing securities with the cash in lieu amounts or to sell securities to generate the cash in lieu amounts prior to the NAV Calculation

²⁸ Orders will come from the Authorized Participant directly to the Fund's Transfer Agent or Distributor. The AP Representative will be copied on the order and authorized to purchase the necessary Deposit Instruments.

Time. On days when a Stock Exchange closes earlier than normal, the Funds may require custom orders to be placed earlier in the day.

D. Pricing of Shares

The secondary market price of Shares trading on an Exchange will be based on a current bid/ask market. The secondary market price of Shares of any Fund, like the price of all traded securities, is subject to factors such as supply and demand, in addition to the current VIIV. Shares available for purchase or sale on an intraday basis on an Exchange, do not have a fixed relationship to the previous day's NAV per Share or the current day's NAV per Share. Therefore, prices on an Exchange may be below, at, or above the most recently calculated NAV per Share of such Shares. The price at which Shares trade will be impacted by arbitrage opportunities created by the ability to purchase or redeem Creation Units at the current NAV per Share, which is designed to ensure that Shares will trade at a market price at or close to the NAV per Share of the Fund. The Trust believes that, because Authorized Participants and other market participants will have access to necessary information that will enable them to determine when a Fund is trading at a price materially different from the current NAV per Share, Shares will trade at a market price at or close to the NAV per Share of the Fund.²⁹

No secondary sales will be made to broker-dealers at a concession by the Distributor or by a Fund.³⁰ Transactions involving the sale of Shares on an Exchange will be subject to applicable customary brokerage fees or commissions and charges.

IV. Information Available to Investors

A. VIIV

In lieu of daily portfolio transparency, the Funds will disclose other data to the marketplace designed to provide adequate information to market participants to permit an arbitrage mechanism that will keep the trading price of the Shares at or close to their NAV per Share. The Exchange on which a Fund is primarily listed will disseminate the VIIV for each Fund in one-second intervals during regular trading hours, through the facilities of the Consolidated Tape Association. The VIIV functions as an intraday indicative NAV calculation

²⁹ The creation/redemption process provides the Authorized Participant with an opportunity to arbitrage the spread between the market price of a Shares and price based on the NAV of the Shares, as indicated by the VIIV. In addition, other market participants are expected to seek to purchase Shares when the market price of a Shares is below the NAV based price, thus increasing market demand for the Shares and raising the Market Price, and seek to sell Shares when the Market Price is above the NAV based price, thus reducing demand for the Shares. In the aggregate, this arbitrage pressure results in price adjustments that ensure stability between a Fund's NAV and its current market price per share.

³⁰ As with all Prior ETFs, no primary market sales will be made to broker-dealers at a concession by the Distributor or by a Fund.

that is made every second throughout the trading day. The Funds will adopt uniform procedures governing the calculation and dissemination of the VIIV and each Fund's Adviser will bear responsibility for the oversight of that process ("**VIIV Procedures**"). Each Fund's Adviser will also, as part of that oversight process, periodically, but no less than annually, review the VIIV Procedures. Any changes to the procedures will be submitted to the Board for review. As described above, the specific methodology for calculating the VIIV will be disclosed on each Fund's web site.

Each Fund will employ two separate calculation engines, a primary and a secondary, to provide two independently calculated intraday indicative values ("**Calculation Engines**"). Each Fund will also employ a "**Pricing Verification Agent**" to compare, and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare, the two data streams from the Calculation Engines on a real time basis.³¹ If, during the process of real time price verification, the indicative values from the Calculation Engines differ by more than 25 basis points for 60 consecutive seconds,³² the Pricing Verification Agent will alert the Adviser and the Adviser will request that the listing Exchange halt trading of the Fund's Shares until the two indicative values come back into line.³³

³¹ It is anticipated that each Calculation Engine could be using some combination of different hardware, software and communications platforms to process the data. Different hardware platforms' operating systems could be receiving and calculating the data inputs differently, potentially resulting in one Calculation Engine processing the indicative value in a different time slice than another Calculation Engine's system, thus processing values in different sequences. The processing differences between different Calculation Engines are most likely in the sub-second range. Consequently, the frequency of occurrence of out of sequence values among different Calculation Engines due to differences in operating system environments should be minimal. Other factors that could result in sequencing that is not uniform among the different Calculation Engines are message gapping, internal system software design, and how the data is transmitted to the Calculation Engine. While the expectation is that the separately calculated intraday indicative values will generally match, having dual streams of redundant data that must be compared by the Pricing Verification Agent will provide an additional check that the resulting VIIV is accurate.

³² Any small divergence of less than 25 basis points would be lower than the average bid/ask spread for actively managed ETFs, and relatively immaterial to the overall indicative value. For the period January 1, 2017, to October 31, 2017, the average bid/ask spread on actively managed equity ETFs traded on NYSE Arca, as a percentage, was 38 basis points. For the same period, the spread on all exchange traded products traded on NYSE Arca, as a percentage, was 54 basis points. Each Fund reserve the right to change these thresholds to the extent deemed appropriate and upon notification to the Fund's Board.

³³ Should there ever be a discrepancy between the two indicative values, the Fund will continue to disseminate the primary indicative value, as set forth in the VIIV Procedures, as the VIIV. Of course, as stated above, if the divergence is more than 25 basis points for more than 60 seconds, the Adviser will request that the Exchange halt trading on the Fund's shares until the two indicative values come back in line. Nonetheless, during the initial 60 seconds, and thereafter, the Fund will continue to disseminate the primary indicative value. Similarly, if the divergence between the two indicative values is less than 25 basis points, the primary indicative value will continue to be disseminated as the VIIV until the discrepancy is eliminated.

Pursuant to the VIIV Procedures, the VIIV will be calculated to the nearest penny by dividing the “**Intraday Fund Value**” as of the time of the calculation by the number of total Shares outstanding. Intraday Fund Value is the sum of the Fund’s assets (*e.g.*, the amount of cash and cash equivalents held in a Fund’s portfolio,³⁴ the current value of the securities positions in the Fund’s portfolio, plus any accrued interest, and declared but unpaid dividends) minus all accrued liabilities.³⁵ All portfolio securities will be valued by the Calculation Engines throughout the trading day at the mid-point between the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor (“**National Best Bid and Offer**”).³⁶

By calculating the VIIV to the nearest penny, market participants will be able to readily compare the VIIV to the current market price of a Fund’s Shares. The Trust believes that, by utilizing the mid-point pricing for purposes of the VIIV calculation, the VIIV will be an accurate representation of the value of a Fund’s portfolio securities, as quotations based on the mid-point of bid/ask spreads provide real-time information on the prices at which market participants are willing to buy or sell securities at any given point in time. The Trust considered using last sale price of a security for purposes of the VIIV calculation, but concluded that, given the speed at which news is reflected in the global equity markets, the last sale price may no longer accurately reflect, at the time of calculation of the VIIV, the price at which market participants are willing to transact in the security. Because quotations are updated more frequently than last sale information, especially for inactive securities, the VIIV calculation will utilize the most current and accurate information available.

We acknowledge that, if the bid/ask spread on a security is significant, the mid-point may not accurately reflect the price at which the security could be bought or sold, which may cause the VIIV to deviate from the actual purchase or sale price of a Fund’s underlying portfolio securities. In light of this possibility, the Adviser will monitor the bid and ask quotations for any portfolio security and, if the Adviser determines pursuant to the VIIV Procedures that a portfolio security does not have readily available market quotations, which could be the situation when, for example, an Exchange institutes an extended trading halt in a portfolio security, that fact, along with the identity and weighting of that security in the Fund’s VIIV calculation, will be publicly disclosed on the Fund’s web site.³⁷ The Initial Adviser

³⁴ Repurchase agreements and short-term US Treasury securities will be treated as cash for purposes of determining the VIIV.

³⁵ The portfolio used for calculating the VIIV, as set forth in the VIIV Procedures, will be the same portfolio used to calculate the Fund’s NAV for that Business Day.

³⁶ All SEC-registered exchanges and market centers send their trades and quotes to a central consolidator where the Consolidated Tape System and Consolidated Quote System data streams are produced and distributed worldwide. See <https://www.ctaplans.com/index>. Although there is only one source of market quotations, each Calculation Engine will receive the data directly and calculate an indicative value separately and independently from each other Calculation Engine.

³⁷ Any person may register on the Fund’s website to receive an email notification of any such web site disclosures.

believes that this mix of information will permit market participants to calculate the effect of that security on the VIIV calculation, determine their own fair value of the disclosed portfolio security, and better judge the accuracy of that day's VIIV for the Fund.³⁸ Nonetheless, the VIIV will continue to be calculated using the mid-point of the National Best Bid and Offer.

In developing the method for determining the VIIV, the Trust has carefully sought to provide a VIIV calculation that is precise and provides a level of transparency that Applicants believe will facilitate arbitrage, but also protect a Fund from "front running" and "free riding" by other investors and/or managers which could harm, and result in substantial costs to, the Funds. The Initial Adviser believes that it is highly unlikely that a VIIV calculated as described above and provided at one second intervals would allow others to reverse engineer a Fund's investment strategy for purposes of front running or free riding, and have sought to confirm this belief mathematically.

B. Additional Information and Data

Investors interested in a particular Fund can obtain each Fund's filings with the Commission. Those filings may be viewed on-screen or downloaded from the Commission's website at <http://www.sec.gov>.

In addition, because the Shares are listed on an Exchange, prospective investors have access to information about the a Fund over and above what is normally available about a security of an open-end investment company. Information regarding market price and volume is and will be continually available on a real-time basis throughout the day on broker-dealers' computer screens and other electronic services. The Exchange or other third-party market data vendor will also disseminate a variety of data with respect to Shares on a daily basis, by some widely disseminated means, including information as of the previous day's close with respect to NAV. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Information regarding secondary market prices and trading volume of Shares will be broadly available in real time throughout the trading day.

³⁸ We note that in times of recent market volatility there has been a disconnect between the market price of certain portfolio securities of ETFs, primarily because of "circuit breakers" that have halted trading of those portfolio securities, and the market price of the ETFs holding those securities. At any time that the securities representing 10% or more of a Fund's portfolio become subject to a trading halt or otherwise have current quotations that the Adviser determines to be no longer reliable for purposes of calculating VIIV, the Initial Adviser would request the Exchange to halt trading on the Fund. During any such trading halt, the VIIV would continue to be calculated and disseminated. We further note that Prior ETFs do not have a similar mechanism to (1) disclose when trading of a portfolio security has halted, and its potential impact on the indicative intraday value, or (2) halt trading in the Prior ETF's shares to protect investors when a significant portion of the underlying portfolio securities have halted trading. We recognize that many retail investors do not have the tools to identify and monitor such major disruptions in the market, and believe the 10% threshold strikes an appropriate balance between two competing interests of a Fund's investors: (1) protection from the potential significant negative impact of unusual market events and (2) the ability to freely trade shares of a Fund.

Further, as with Prior ETFs, each Fund's website will also contain the following information on a per Share basis: (1) the prior business day's closing NAV and closing market price (based on the mid-point of the National Best Bid and Offer at the time the Fund's NAV is calculated or the close of ETF trading on the Exchange ("**Bid-Ask Price**")), and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV; and (2) data for a period covering at least the four previous calendar quarters (or life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily Bid-Ask Price and closing NAV, and the magnitude of such premiums and discounts.

The Initial Adviser believes that, while the level of information provided will not easily permit market participants to reverse engineer a Fund's investment strategy, market participants will, as they do with Prior ETFs, be able to construct a hedging portfolio that will allow such market participants to take market making positions in Shares while remaining adequately hedged.

C. Oversight

Unlike Prior ETFs, the Funds will not publicly disclose or disseminate their daily Creation Baskets. Further, unlike all Prior Active ETFs, the Funds will not publicly disclose or disseminate the identities and quantities of their portfolio securities on a daily basis.³⁹ Rather, on each Business Day, before commencement of trading in Shares on the Exchange, the Funds will provide to each AP Representative of each Authorized Participant the identities and quantities of the instruments comprising a Creation Basket and the estimated Balancing Amount (if any), for that day. This information will permit Authorized Participants to purchase Creation Units through an in-kind transaction with the Fund, as described above.

Given that this structure is unlike Prior ETFs, the Adviser will monitor on an on-going basis how Shares trade, including the level of any market price premium or discount to NAV and the bid/ask spreads on market transactions. For at least the first three years after launch of each Fund, the Adviser will undertake to promptly call a meeting of the Board (and will present to the Board for its consideration, recommendations for appropriate remedial measures) and the Board will promptly meet if, for 30 or more days in any quarter or 15 days in a row, the absolute difference between either the market closing price or the bid/ask spread, on one hand, and NAV, on the other, exceeds 1.00% or the bid/ask spread exceeds 1.00%. In such a circumstance, the Board will consider the continuing viability of the Fund, whether shareholders are being harmed, and what, if any, action would be appropriate to, among other things, narrow the premium/discount or spread, as applicable.⁴⁰ The Board will then decide

³⁹ For the same reason, the Funds will not be able to rely on Rule 6c-11 under the 1940 Act.

⁴⁰ For at least the first three years after launch of each Fund, the Board will also undertake these considerations on an annual basis, regardless of whether the Fund's preset thresholds have been crossed.

whether to take any such action. Potential actions may include, but are not limited to changing Lead Market Makers, listing the Fund on a different Exchange, changing the size of Creations Units, changing the Fund's investment objective or strategy, and liquidating the Fund.

V. Request for Relief - Section 11(d)(1)

Section 11(d)(1) of the Exchange Act generally prohibits a person who is both a broker and 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 he participated as a member of a selling syndicate or group within thirty days prior to such transaction.

The SEC Staff has previously issued relief to Prior Active ETFs under Section 11(d)(1) with respect to Prior Active ETFs which meet certain conditions, and the Trust requests that similar relief be extended subject to identical conditions, notwithstanding that the Funds differ from those Prior Active ETFs in that the Funds will not disclose their current Portfolio Securities on a daily basis.⁴¹ Specifically, the Trust seeks the following relief with respect to Funds which are issued by an open-end investment company registered with the Commission under the 1940 Act and that hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the Fund ("**Qualifying Fund**"):

(1) an exemption from Section 11(d)(1) to permit broker-dealers that do not act as Authorized Participants for a Fund, but that effect transactions in Shares of such Fund exclusively in the secondary market, to extend or maintain or arrange for the extension or maintenance of credit to or for customers on Shares of Qualifying Funds in connection with secondary market transactions in such Fund's Shares, provided that the broker-dealer does not (and its associated persons who are natural persons do not), directly or indirectly (including through any affiliate of such broker-dealer), receive from the fund complex⁴² any payment,

⁴¹ See, WisdomTree Letter (Although not stated as a condition, WisdomTree represented that on each Business Day, prior to the opening of the NYSE, each Fund will disclose on the Funds' website, the identities and quantities of the money market securities and other assets held by the Fund (*i.e.*, the Portfolio Securities) that will form the basis for each of the Fund's calculation of NAV at the end of the Business Day. The two stated conditions underlying the relief are that (1) the ETF shares are issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act; and (2) the ETF shares are listed and traded on a market 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 the market (or that is relying on Rule 19b-4(e) to list and trade the ETF shares). See, also, SIA Letter, with respect to index-based ETFs (The additional condition applicable to Prior Index ETFs is that the ETF consists of a basket of twenty or more Component Securities with no one component security constituting more than 25% of the total value of the ETF, and is managed to track a particular index all of the components of which are publicly available).

⁴² For purposes of this relief request, a "fund complex" means the issuer of the Shares, any other issuer of Shares that holds itself out to investors as a related company for purposes of investment or investor services, any

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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 permitted under FINRA Rule 2341(1)(5)(A), (B), or (C); and

(2) an exemption from Section 11(d)(1) to permit broker-dealers to extend or maintain or arrange for the extension of maintenance of credit to or for customers on the Shares of Qualifying Funds for which such broker-dealer serves as an Authorized Participant subject to the following conditions:

(a) neither the broker-dealer, nor any natural persons associated with such broker-dealer, directly or indirectly (including through any affiliate of such broker-dealer), receives 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 noncash compensation permitted under FINRA Rule 2341(1)(5)(A), (B), or (C); and

(b) the broker-dealer does 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).

VI. Conclusion

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. The forms of relief requested are substantially similar to those actions that the Commission and the Staff have taken in similar circumstances, most notably in SLB-9 and the Wisdom Tree Letter. If you have any questions, please call me at 202.373.6799.

Sincerely,



W. John McGuire

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