

# SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80052, File No. TP 17-03)

February 16, 2017

## ORDER GRANTING LIMITED EXEMPTIONS FROM RULE 102 OF REGULATION M RELATING TO NPM SECURITIES, LLC'S ALTERNATIVES PLATFORM

### I. INTRODUCTION

By letter dated February 15, 2017, The NASDAQ Private Market, LLC and its registered broker-dealer and alternative trading system (“ATS”) subsidiary, NPM Securities, LLC (together, “NPM”), request a limited exemption from Rule 102 of Regulation M in order to allow closed-end investment companies that are registered under the Investment Company Act of 1940, as amended (“Investment Company Act”), that are continuously offered and that engage in periodic tender offers (“Tender Offer Funds”), to conduct tender offers during a limited transition period for their securities pursuant to Rule 13e-4 under the Securities Exchange Act of 1934, as amended (“Exchange Act”), during the applicable restricted period under Regulation M even though periodic auctions in the securities of such Tender Offer Funds also are conducted on the Alternatives Platform, a technology platform operated by NPM that is designed, among other things, to conduct auctions for unregistered securities, including certain closed-end fund interests. NPM also requests a limited exemption from Rule 102 of Regulation M regarding certain closed-end investment companies that are structured as a master fund (“Master Fund”) with two feeders, one of which relies on periodic tender offers for liquidity (“Feeder T”) and the other of which relies on auctions conducted on NPM’s Alternatives Platform (“Feeder A”), in order to allow Master Funds and Feeder T funds to engage in periodic tender offers during the applicable restricted period under Regulation M even though periodic auctions in the securities of the related Feeder A funds also are conducted on NPM’s Alternatives Platform (Feeder A

funds and Tender Offer Funds collectively “Auction Funds,” and Auction Funds, Master Funds, and Feeder T funds collectively “Funds”).

This order grants a limited exemption from Rule 102 of Regulation M solely to permit Tender Offer Funds to conduct tender offers, during a limited transition period, for their securities during the applicable restricted period even though periodic auctions of their securities also are conducted on the Alternatives Platform, subject to certain conditions described below. This order also grants a limited exemption from Rule 102 of Regulation M to permit Master Funds and Feeder T funds to conduct tender offers for their securities during the applicable restricted period even though periodic auctions in the securities of the related Feeder A funds also are conducted on the Alternatives Platform, subject to the conditions described below.<sup>1</sup>

## **II. BACKGROUND**

NPM proposes to allow “Eligible Investors” to buy and sell shares of Auction Funds in periodic liquidity programs structured as auctions.<sup>2</sup> The auctions will take place over a specified

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<sup>1</sup> To the extent that a closed-end fund issuer engages in transactions complying with Rule 23c-3 under the Investment Company Act (17 CFR 270.23c-3), including the discretionary repurchase offers permitted by paragraph (c) of such rule, such transactions would be excepted from Rule 102 regardless of activity on the Alternatives Platform. See 17 CFR 242.102(b)(2)(i).

<sup>2</sup> Investors that may purchase or sell a position in a 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 of 1933, as amended (“Securities Act”). See 17 CFR 230.501(a). Alternatives Platform participants will include registered broker-dealers, Commission- and state-registered investment advisers, advisers that have filed as exempt reporting advisers with the Commission, and institutional investors that are “qualified institutional buyers,” as defined in Rule 144A under the Securities Act (“QIBs”) (collectively, “Platform Participants”). Eligible Investors that do 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

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.

NPM represents that it will conduct auctions on the Alternatives Platform among “Eligible Investors” that are facilitated by a designated liquidity provider (“DLP”). NPM represents that it will select one or more DLPs for each auction and that DLPs will be selected based on willingness to agree to established liquidity obligations specific to an auction that are established by NPM with input from market participants. NPM represents that Funds and their 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. NPM also represents that the DLP will not receive any compensation for serving as DLP from any other party, including NPM.

Each auction will consist of four distinct periods: (1) configuration; (2) order entry;<sup>3</sup> (3) finalization; and (4) closing.

Configuration. During this period, NPM will set 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 their 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.

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Platform but may only purchase and sell interests for its own account.

<sup>3</sup> Orders entered in the auction could be submissions of indication of interest to buy or sell.

NPM will require Auction Funds to disseminate their prior month NAV during this period to all Platform Participants.<sup>4</sup> 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 order based on that data. As a condition to becoming 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 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. 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. 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.

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<sup>4</sup> NPM represents that it 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.

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 by NPM to all participants. A closing schedule is provided by NPM to the Fund or the Fund's transfer agent. 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.

NPM represents that Funds and their affiliated purchasers will not participate, directly or indirectly, in auctions, other than the potential for directing pending subscriptions to NPM to be matched with unexecuted sell side orders in an auction or to be crossed with any existing unexecuted sell interest at the most recently provided NAV in the event that a clearing price cannot be determined due to a lack of executable buy interest, 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.

### **III. REQUEST FOR RELIEF**

#### **A. "Testing the Waters" Transition Period**

NPM requests limited relief to permit Tender Offer Funds to participate in a "testing the waters" transition period wherein both auctions and issuer tender offers would be permitted for a two-year period starting with the opening of the tender offer prior to the first auction, with time between auctions and tender offers, on a one-time only basis for each interested Tender Offer Fund, during the Regulation M restricted period. This would permit Tender Offer Funds to determine whether the auction model is of interest to their investors and to gradually transition their investors to an auction-only environment. Specifically, in the first year of the two-year transition period, NPM would impose a 30-day buffer period between the end of a tender offer

and the commencement of the following auction, allowing each Tender Offer Fund to hold no more than four tender offers in year one. In the second year of the two-year 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 in year two and the commencement of the following tender offer, and the Tender Offer Fund would be permitted to offer 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.<sup>5</sup>

In addition, 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

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<sup>5</sup> Investors who have sold in an auction then tender the same shares should consider the application of Exchange Act Rule 14e-4, which prohibits short and hedged tendering. See 17 CFR 240.14e-4.

securities purchased represented by subscriptions that were forwarded to the auction, as opposed to represented by non-subscription buy side interest.<sup>6</sup>

NPM represents that the relief would permit Tender Offer Funds to transition to an auction-only Fund at the end of the two-year period. Auctions would incrementally replace tender offers during the two-year period, as provided in NPM's request and as determined by the Tender Offer Fund's board of directors ("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 each 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 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.

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, NPM believes that shareholders of the Tender Offer Funds will be given access to a program developed 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. NPM also believes that

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<sup>6</sup> 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.

the auction could 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. In addition, NPM believes that the conditions 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, NPM believes 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;
- 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 reducing 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 Feeder 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, these Funds would be closed-end investment companies registered under the Investment Company 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.<sup>7</sup> 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

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<sup>7</sup> 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 for Feeder T shares.

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 Fund's tender offer would be in the best interest of Feeder A and its shareholders.<sup>8</sup> 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).<sup>9</sup>

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

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<sup>8</sup> 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 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.

<sup>9</sup> See note 1, above.

three months between requesting that Feeder A make the exchange and receiving interests in Feeder T.<sup>10</sup> Interests in Feeder T could not be exchanged for interests in Feeder A.

Although none of the Master Fund or the two feeders would individually engage in both 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 that would be implemented:

- There would be a division between investor participation in tenders 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;
- 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);
- NPM would require an investor seeking to exchange from Feeder A to Feeder T to wait no less than three 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;

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<sup>10</sup> 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 months from the date that the Feeder A investor requested the exchange from Feeder A to Feeder T. The Division of Investment Management would not recommend enforcement action to the Commission under Sections 12(d)(1), 17(a), 17(d), or 23(c) of the Investment Company Act and Rule 17d-1 thereunder with respect to the transactions described in this footnote. This order does not address issues that may otherwise arise under the Investment Company Act.

- 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 Feeder A. The results of the previous auction 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;<sup>11</sup> and
- The securities of the Master Fund and the Feeder T fund will not trade on any secondary market.

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<sup>11</sup> 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.

#### IV. DISCUSSION

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such persons, directly or indirectly, from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security<sup>12</sup> during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, except as specifically permitted in the rule.<sup>13</sup>

##### A. “Testing the Waters” Transition Period Request

Regarding the “testing the waters” request, on the basis of the facts and representations as outlined in this order and the letter requesting the exemption, and the limited time nature of the overlap between issuer tender offers and auctions during the “testing the waters” period, and subject to the conditions set out below, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rule 102 of Regulation M solely to permit Tender Offer Funds whose securities are the subject of periodic auctions on the Alternatives Platform to engage in issuer tender offers at NAV, conducted pursuant to Rule 13e-4,<sup>14</sup> during a two-year “testing the waters” transition period in the manner described above in Section III (“Transition Period”).<sup>15</sup> The Transition Period

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<sup>12</sup> Covered security is defined as any security that is the subject of a distribution, or any reference security. 17 CFR 242.100(b).

<sup>13</sup> 17 CFR 242.102(a).

<sup>14</sup> 17 CFR 240.13e-4. The requirements that the tender offer be at NAV and be conducted pursuant to Rule 13e-4 mirror requirements in the existing Rule 102(b)(2)(ii) exception. 17 CFR 242.102(b)(2)(ii).

<sup>15</sup> Rule 102(e) allows the Commission to grant an exemption from the provision of Rule 102, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities. 17 CFR 242.102(e).

commences on the opening date of the tender offer prior to the first auction for the securities of the Tender Offer Fund on the Alternatives Platform.

This limited exemption is subject to a number of conditions.<sup>16</sup> First, the securities of the Tender Offer Fund may only be traded via periodic auctions on the Alternatives Platform during the Transition Period.<sup>17</sup> This condition is designed to ensure that another secondary trading market for the securities of the Tender Offer Fund does not develop during the Transition Period.

Second, in the first year there must be a 30-day buffer period between the end of a tender offer and the commencement of the following auction, and no more than four tender offers. In the second year, there must be a 60-day buffer period between the end of a tender offer and the commencement of the following auction, and a 60-day buffer period between the end of an auction that takes place in year two and the commencement of the following tender offer, and no more than two tender offers. This condition is designed to permit Tender Offer Funds gradually to test the feasibility of auctions on the Alternatives Platform as an alternative to tender offers over a two-year period while still helping to reduce the impact of issuer tender offers on the auctions.

Third, the Transition Period provided by the exemption would only be available on a one-time basis to a Tender Offer Fund. A Tender Offer Fund that withdraws from having auctions for its securities on the Alternatives Platform, whether during or at the end of the Transition Period, or at any time thereafter, would not be able to use the exemption to enter another Transition Period. This condition is intended to limit the impact of issuer tender offers on

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<sup>16</sup> The obligation to comply with the conditions rests with the Tender Offer Fund, not NPM.

<sup>17</sup> Tender Offer 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.

auctions by providing only one two-year period during which the securities of a Tender Offer Fund may be subject to both tender offers and periodic auctions.

Fourth, the Tender Offer Fund and any affiliated purchaser<sup>18</sup> of the Tender Offer Fund may not participate, directly or indirectly, in auctions on the Alternatives Platform, other than by directing pending subscriptions to NPM, at NPM's sole discretion, to be (1) matched with unexecuted sell side orders in an auction after the clearing price has been set and all executable orders have been matched, or (2) crossed with any existing unexecuted sell interest at the most recently provided NAV in the event that a clearing price cannot be determined due to a lack of executable buy interest. In addition, the Tender Offer Fund and any affiliated purchaser of the Tender Offer Fund may not assist in setting auction terms, except as to minimum investment parameters that appear in the Tender Offer Fund's prospectus or offering document. These conditions are intended to minimize the impact that the Tender Offer Fund and any affiliated purchaser of the Tender Offer Fund may have on auctions on the Alternatives Platform.

Fifth, the Tender Offer Fund must disclose the results of its most recent tender offer, including the amount of shares validly tendered and not withdrawn by shareholders and the amount of shares actually purchased by the Tender Offer Fund (if the amount purchased is available), and its prior month NAV (or its most recently calculated NAV if the Tender Offer Fund calculates its NAV more frequently), to all investors participating in the following auction, whether as participants or represented by participants, at a time sufficiently prior to the end of the order entry period so that investors have adequate time and the ability to adjust their buy and sell orders based on that data. This condition is designed to help ensure that all investors participating in an auction have access to the most recent tender offer and NAV information.

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<sup>18</sup> See 17 CFR 242.100(b).

Lastly, the Tender Offer Fund must 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. 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 such auction, as opposed to represented by non-subscription buy side interest. This condition is designed to help ensure that potential and existing investors in the Tender Offer Fund have access to information concerning auction results that will help promote informed investment decisions.

**B. Dual Feeder with One-Time Exchange for New Funds Request**

With respect to the dual feeder structure request, on the basis of the facts and representations as outlined in this order and the letter requesting the exemption, and subject to the conditions set out below, the Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rule 102 of Regulation M solely to permit Master Funds and Feeder T funds to engage in issuer tender offers at NAV, conducted pursuant to Rule 13e-4,<sup>19</sup> in the manner described above, while the securities of the corresponding Feeder A funds are subject to periodic auctions on the Alternatives Platform.

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<sup>19</sup> As with the exemption for the Transition Period, the requirements that the tender offer be at NAV and be conducted pursuant to Rule 13e-4 mirror requirements in the existing Rule 102(b)(2)(ii) exception. 17 CFR 242.102(b)(2)(ii).

This limited exemption is also subject to a number of conditions.<sup>20</sup> First, the exemption is limited to tender offers made by the Master Fund and the Feeder T fund for their respective securities. This condition is designed to make clear that the exemption does not extend to tender offers made by the Feeder A fund.

Second, the securities of the Master Fund and the Feeder T fund may not be traded on any secondary market. This condition is designed to ensure that a secondary trading market for the securities of the Master Fund and the Feeder T fund do not develop under this exemption.

Third, the securities of the Feeder A fund may only be traded via periodic auctions on the Alternatives Platform under the exemption.<sup>21</sup> This condition is designed to ensure that another secondary trading market for the securities of the Feeder A fund does not develop under the exemption.

Fourth, the Feeder A fund may only engage in tender offers of its securities as permitted under Rule 102(b)(2)(i) of Regulation M.<sup>22</sup> This is to limit the impact of tender offers by the Feeder A fund on auctions on the Alternatives Platform.

Fifth, an investor seeking to exchange from Feeder A to Feeder T would be required to wait no less than three months between requesting that Feeder A make the exchange and

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<sup>20</sup> The obligation to comply with the conditions rests with the Master Fund, Feeder T, and Feeder A, not NPM.

<sup>21</sup> Feeder A 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.

<sup>22</sup> Feeder A may, however, take the steps necessary to effectuate shareholder-initiated exchanges of securities of Feeder A for securities of Feeder T, as described above. See note 10, supra, and accompanying text, and note 23, infra.

receiving shares in Feeder T.<sup>23</sup> This waiting period is designed to reduce the impact that Feeder T tender offers may have on auctions in Feeder A securities on the Alternatives Platform.

Sixth, shareholders in the Feeder T fund are not permitted to exchange their shares back to Feeder A shares, further limiting the impact that Feeder T tender offers may have on auctions in Feeder A securities on the Alternatives Platform.

Seventh, the Feeder A fund, the Master Fund, and the Feeder T fund, and any affiliated purchaser thereof<sup>24</sup> may not participate, directly or indirectly, in auctions on the Alternatives Platform, other than by the Feeder A fund directing pending subscriptions to NPM, at NPM's sole discretion, to be (1) matched with unexecuted sell side orders in an auction after the clearing price has been set and all executable orders have been matched or, (2) crossed with any existing unexecuted sell interest at the most recently provided NAV in the event that a clearing price cannot be determined due to a lack of executable buy interest. In addition, the Feeder A fund, the Master Fund, and the Feeder T fund, and any affiliated purchaser thereof may not assist in setting auction terms, except as to minimum investment parameters that appear in the Feeder A fund's prospectus or offering document. These conditions are intended to minimize the impact that the funds and any affiliated purchaser of the funds may have on auctions on the Alternatives Platform.

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<sup>23</sup> The Commission also finds, on the basis of the facts and representations outlined in this order and the letter, that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rule 102 of Regulation M for shareholder-initiated exchanges of securities of Feeder A for securities of Feeder T to make clear that the rule will not prevent Feeder A or Feeder T from taking the steps necessary to effectuate such shareholder-initiated exchanges, as described above. See note 10, supra, and accompanying text.

<sup>24</sup> See 17 CFR 242.100(b).

Eighth, the Feeder A fund must disclose its prior month NAV (or its most recently calculated NAV if Feeder A calculates its NAV more frequently) to all investors participating in the following auction, whether as participants or represented by participants, at a time sufficiently prior to the end of the order entry period so that investors have adequate time and the ability to adjust their buy and sell orders based on that data. This condition is designed to help ensure that all investors participating in an auction have access to the most recent NAV information to help protect the fairness of the auction process.

Lastly, Feeder A must 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 represented by subscriptions that were forwarded to such auction, as opposed to represented by non-subscription buy side interest. This condition is designed to help ensure that potential and existing investors have access to information concerning auction results that will help promote informed investment decisions.

## **V. CONCLUSION**

IT IS THEREFORE ORDERED, pursuant to Rule 102(e) of Regulation M, that periodic tender offers of securities, at NAV, conducted pursuant to Rule 13e-4 by a closed-end investment company that engages in a continuous offering of its securities (“Tender Offer Fund”) are hereby exempted from Rule 102 of Regulation M solely during a two-year transition period (“Transition

Period”) starting with the opening of the tender offer prior to the first auction for the securities of such Tender Offer Fund on the Alternatives Platform of NPM Securities, LLC (“NPM”), subject to the following conditions:

- (1) The securities of the Tender Offer Fund are only traded via periodic auctions on the Alternatives Platform during the Transition Period;
- (2) During the first year of the Transition Period for the Tender Offer Fund, there is a 30-day period between the end of a tender offer and the commencement of the following auction, and no more than four tender offers, and during the second year of the Transition Period, there is a 60-day buffer period between the end of a tender offer and the commencement of the following auction, and a 60-day buffer period between the end of an auction that takes place in year two and the commencement of the following tender offer, and no more than two tender offers;
- (3) If the Tender Offer Fund withdraws from having auctions for its securities on the Alternatives Platform, whether during or at the end of the Transition Period, or at any time thereafter, the Tender Offer Fund may not use this exemption to enter another Transition Period;
- (4) The Tender Offer Fund and any affiliated purchaser, as defined in Rule 100 of Regulation M, of the Tender Offer Fund will not (a) participate, directly or indirectly, in auctions on the Alternatives Platform (other than the potential for directing pending subscriptions to NPM, at NPM’s sole discretion, to be (i) matched with unexecuted sell side orders in an auction after the clearing price has been set and all executable orders have been matched, or (ii) crossed with any existing unexecuted sell interest at the most recently provided NAV in the event that a clearing price cannot be

- determined due to a lack of executable buy interest), or (b) assist in setting auction terms, except as to minimum investment parameters that appear in the Tender Offer Fund's prospectus or offering document;
- (5) The Tender Offer Fund discloses the results of its most recent tender offer, including the amount of shares validly tendered and not withdrawn by shareholders and the amount of shares actually purchased by the Tender Offer Fund (if the amount purchased is available), and its prior month NAV (or its most recently calculated NAV if the Tender Offer Fund calculates its NAV more frequently), to all investors participating in the following auction, whether as participants or represented by participants, at a time sufficiently prior to the end of the order entry period so that investors have adequate time and the ability to adjust their buy and sell orders based on that data; and
- (6) The Tender Offer Fund makes available the results of the previous auctions<sup>25</sup> 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.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that periodic tender offers of securities, at NAV, conducted pursuant to Rule 13e-4 by closed-end investment companies that engage in continuous offerings of their securities and that are structured as a

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<sup>25</sup> 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 such auction, as opposed to represented by non-subscription buy side interest.

master fund (“Master Fund”) with two feeder funds, one of which relies upon periodic tender offers for liquidity (“Feeder T”) and the other of which relies upon auctions conducted on NPM’s Alternatives Platform (“Feeder A”), are hereby exempted from Rule 102 of Regulation M, subject to the following conditions:

- (1) The tender offers are made by the Master Fund and the Feeder T fund for their respective securities;
- (2) The securities of the Master Fund and the Feeder T fund are not traded on any secondary market;
- (3) The securities of the corresponding Feeder A fund are only traded via periodic auctions on the Alternatives Platform;
- (4) Feeder A only engages in tender offers of its securities as permitted under Rule 102(b)(2)(i) of Regulation M;
- (5) Shareholders in Feeder A seeking to exchange from Feeder A to Feeder T must wait no less than three months between requesting that Feeder A make the exchange and receiving shares in Feeder T;
- (6) Shareholders in Feeder T are not permitted to exchange their shares for Feeder A shares;
- (7) Feeder A, the Master Fund, Feeder T, and any affiliated purchaser thereof will not (a) participate, directly or indirectly, in auctions on the Alternatives Platform (other than the potential for Feeder A to direct pending subscriptions to NPM, at NPM’s sole discretion, to be (i) matched with unexecuted sell side orders in an auction after the clearing price has been set and all executable orders have been matched, or (ii) crossed with any existing unexecuted sell interest at the most recently provided NAV

- in the event that a clearing price cannot be determined due to a lack of executable buy interest), or (b) assist in setting auction terms, except as to minimum investment parameters that appear in the Feeder A's prospectus or offering document;
- (8) Feeder A discloses its prior month NAV (or its most recently calculated NAV if Feeder A calculates its NAV more frequently) to all investors participating in the following auction, whether as participants or represented by participants, 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; and
- (9) Feeder A makes available the results of the previous auctions<sup>26</sup> 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.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that shareholder-initiated exchanges of securities of Feeder A for securities of Feeder T are hereby exempted from Rule 102 of Regulation M.

These exemptions shall terminate upon the event of any material change to the facts or representations as presented in this order and the letter requesting the exemptions. Further, these exemptions are subject to modification or revocation at any time the Commission determines that

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<sup>26</sup> The results of the previous auction 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.

such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemptive relief is limited solely to issuer tender offers that comply with these terms, and does not extend to any other activities. In addition, persons relying on these exemptions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the persons relying on these exemptions.

This order only addresses the application of Rule 102 of Regulation M under the Exchange Act. It does not address the applicability of any other federal or state securities or other laws and rules to the proposed activities, including but not limited to any issues that may arise under the Investment Company Act, compliance with Exchange Act Sections 13(e), 14(d), and 14(e) and the rules and regulations thereunder, compliance with fair access and other requirements under Regulation ATS, or the adequacy of the disclosure required by federal securities laws and rules.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(6).