

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81410; File No. TP 17-10)

August 16, 2017

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to IQ Real Return ETF Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated August 16, 2017 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for IndexIQ ETF Trust (the “Trust”), on behalf of the Trust and one of its investment portfolios, the IQ Real Return ETF (the “Fund”), NYSE Arca, Inc. (“NYSE Arca”) or other national securities exchanges on or through which shares issued by the Fund (“Shares”) may subsequently trade, ALPS Distributors, Inc. (the “Distributor”), and persons or entities engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (“Commission”) under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Fund is a “fund of funds” that is passively managed according to an index. The Fund is designed to track the performance of the IQ Real Return Index (“Index”), which seeks to provide investors with a hedge against the U.S. inflation rate by providing a “real return,” or a return above the rate of inflation, as represented by the Consumer Price Index (“CPI”).

At least 80% of the Fund’s portfolio holdings are, and will be, shares of some or all of the exchange-traded products (“ETPs”) that constitute the Index. The Fund operates in a manner

very similar to that of the ETPs held in its portfolio. Some or all of the remaining 20% may be invested in securities that are not Index constituents that the Fund's adviser believes will help the Fund track the Index, as well as cash, cash equivalents and various types of financial instruments including, but not limited to, futures contracts, swap agreements, forward contracts, reverse repurchase agreements, and options on securities, indices, and futures contracts. In no case will the Fund hold any non-ETP equity security issued by a single issuer in excess of 20% of the Fund's portfolio holdings.

The Letter states that the Fund is relying on Class Relief Letters (as defined in the Letter), but is seeking individual relief for the same reasons as did nine other investment portfolios of the Trust¹—that is, to manage a portfolio with less than twenty “Component Securities” that, from time to time, might also hold also hold a Component Security in excess of 25% of the total value of such portfolio.²

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (“NAV”), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;

¹ See Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M, Exchange Act Rel. No. 77779 (May 6, 2016); Letter from Josephine J. Tao, Esq., Assistant Director, Division of Trading and Markets, to Kathleen H. Moriarty, Esq., Katten Muchin Rosenman LLP (Mar. 25, 2009) (revised Apr. 2, 2009).

² Cf. Letter from James A. Brigagliano, Esq., Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006) (granting relief to exchange-traded funds (“ETFs”) that, among other things, consist of a basket of twenty or more “Component Securities” with no one “Component Security” constituting more than 25% of the total value of the exchange-traded fund).

- Shares of the Fund will be listed and traded on the NYSE Arca (the “Exchange”) or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- Each ETP in which the Fund is invested will meet all conditions set forth in a relevant class relief letter,³ or will have received individual relief from the Commission;
- The value of the Index will be publicly disseminated by a major market data vendor throughout the trading day, and all of the components of the Index will have publicly available last sale trade information;
- On each business day before the opening of business on the Exchange, the Fund’s custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund’s portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing the current value of the cash and securities held in the portfolio of the Fund (not including corporate actions, expenses, and other adjustments made to such portfolio throughout the day) (“Estimated NAV”);

³ Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (Apr. 9, 2007); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (Nov. 21, 2005); see also Staff Legal Bulletin No. 9, “Frequently Asked Questions About Regulation M” (Apr. 12, 2002) (regarding actively managed ETFs).

- At least 80% of the Fund’s portfolio holdings are, and will be, shares of some or all of the ETPs that are the Index constituents;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs can be expected to take advantage of price variations between the Fund’s market price and its NAV;
- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the Estimated NAV, the liquidity of securities and other assets held by the Fund, and the ability to acquire such securities, as well as arbitrageurs’ ability to create workable hedges; and
- A close alignment between the market price of Shares and the Fund’s NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.⁴ However, we find that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding

⁴ While ETFs operate under exemptions from the definitions of “open-end company” under section 5(a)(1) of the 1940 Act and “redeemable security” under section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

for, purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to Shares of the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.⁵

⁵ Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

Rule 102 of Regulation M

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

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to Shares of the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts presented in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.⁶

⁶ We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations in the Letter, that the provision of the

Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to Shares of the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to Shares of the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the

notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemptive relief 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 must rest with the persons relying on this exemptive relief.

This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Robert W. Errett
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(6) and (9).