

EFFECTIVE DECEMBER 23, 2020, THIS LETTER IS WITHDRAWN.

Please consult the following web page for more information:

<https://www.sec.gov/divisions/investment/im-modified-withdrawn-staff-statements>.

Investment Company Act of 1940 – Sections 2(a)(32), 5(a)(1), 17(a), 22(d) and 22(e)
Rule 22c-1

Exemptive Orders Listed on Attachment A

Office of Exemptive Applications/Office of Investment Company Regulation
Division of Investment Management

In March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, exchange-traded funds (“ETFs”), and other investment companies.¹ The press release also indicated that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act (the “Act”) relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The staff announced today that it will no longer defer consideration of exemptive requests under the Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the March 2010 press release.² These representations are: (i) that the ETF’s board periodically will review and approve the ETF’s use of derivatives and how the ETF’s investment adviser assesses and manages risk with respect to the ETF’s use of derivatives; and (ii) that the ETF’s disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance.

The Commission issued the orders listed on Attachment A based on, among other representations, a representation that no actively-managed ETF relying on the relief would invest in options contracts, futures contracts or swap agreements. Consistent with today’s statement, we would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a), 22(d), and 22(e) of the Act, or rule 22c-1 under the Act if actively-managed ETFs operating in reliance on such orders invest in options contracts, futures contracts or swap agreements provided that they comply with the representations stated above.

This position is provided to actively-managed ETFs relying on the orders listed on Attachment A for enforcement purposes only and does not express any position with respect to any other representation or condition of those orders, or application of the federal securities laws.

Elizabeth G. Osterman
Associate Director
Office of Exemptive Applications
Office of Investment Company Regulation
December 6, 2012

Attachment A

¹ See SEC Staff Evaluating the Use of Derivatives by Funds (March 25, 2010), available at <http://sec.gov/news/press/2010/2010-45.htm>

² See Remarks to the ALI CLE 2012 Conference on Investment Adviser Regulation: Legal and Compliance Forum on Institutional Advisory Services, available at <http://www.sec.gov/news/speech.shtml>.

Attachment A

Salient Advisors, L.P. and MarketShares ETF Trust, Investment Company Act Release Nos. 30254(10/31/2012) (notice) and 30281(11/27/2012) (order).

Legg Mason ETF Trust, et al., Investment Company Act Release Nos. 30237 (10/22/2012) (notice) and 30265 (11/16/2012) (order).

IndexIQ Advisors LLC, et al., Investment Company Act Release Nos. 30166 (8/13/2012) (notice) and 30198 (9/10/2012) (order).

Arrow Investment Advisers, LLC, et al., Investment Company Act Release Nos. 30100 (6/7/2012) (notice) and 30127 (7/3/2012) (order).

Federated Investment Management Company and Federated ETF Trust, Investment Company Act Release Nos. 30093 (6/1/2012) (notice) and 30123 (6/26/2012) (order).

Northern Trust Investments, Inc., et al., Investment Company Act Release Nos. 30045 (4/24/2012) (notice) and 30068 (5/22/2012) (order).

Huntington Asset Advisors, Inc., et al., Investment Company Act Release Nos. 30032 (4/10/2012) (notice) and 30061 (5/8/2012) (order).

First Trust Exchange-Traded Fund, et al., Investment Company Act Release Nos. 29983 (3/15/2012) (notice) and 30029 (4/10/2012) (order).

RiverPark Advisors, LLC, et al., Investment Company Act Release Nos. 29840 (10/19/2011) (notice) and 29863 (11/17/2011) (order).

Russell Exchange Traded Funds Trust, et al., Investment Company Act Release Nos. 29706 (6/22/2011) (notice) and 29727 (7/19/2011) (order).

Eaton Vance Management, et al., Investment Company Act Release Nos. 29591 (3/1/2011) (notice) and 29620 (3/30/2011) (order).

iShares Trust, et al., Investment Company Act Release Nos. 29543 (12/27/2010) (notice) and 29571 (1/24/2011) (order).

SSgA Funds Management, Inc., et al., Investment Company Act Release Nos. 29499 (11/17/2010) (notice) and 29524 (12/13/2010) (order).

Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 29459 (10/7/2010) (notice) and 29496 (11/3/2010) (order).

AdvisorShares Investment, Investment Company Act Release Nos. 29264 (5/6/2010) (notice) and 29291 (5/28/2010) (order).

Claymore Exchange-Traded Fund Trust 3, Investment Company Act Release Nos. 29256 (4/23/2010) (notice) and 29271 (5/18/2010) (order).

U.S. One, Inc., Investment Company Act Release Nos. 29128 (2/2/2010) (notice) and 29164 (3/1/2010) (order).

Pacific Investment Management Company LLC and PIMCO ETF Trust, Investment Company Act Release Nos. 28948 (10/20/2009) (notice) and 28993 (11/10/2009) (order).