

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82359; File No. TP 18-05)

December 19, 2017

Order Granting Limited Exemptions from Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to WisdomTree Balanced Income Fund Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated December 19, 2017 (the “Letter”), counsel for WisdomTree Trust (the “Trust”), on behalf of the Trust, WisdomTree Balanced Income Fund (the “Fund”), any national securities exchange on or through which shares issued by the Fund (“Shares”) are listed and/or may subsequently trade, Foreside Fund Services, LLC (the “Distributor”), and other persons or entities engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rules 101 and 102 of Regulation M and Rule 10b-17 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of, initially, not less than 50,000 Shares, which may later be reduced to aggregations of Shares of not less than 25,000 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 will seek to provide investment results that closely correspond, before fees and expenses, to the performance of the WisdomTree Balanced Income Index (the “Index”). The Index tracks the value of a passive investment strategy which consists of investments in ETFs, with approximately a 60% allocation to equities and a 40% allocation to fixed income. The ETFs comprising the Index, which may include WisdomTree ETFs and non-WisdomTree ETFs, must trade on a U.S. national securities exchange and are reconstituted and rebalanced annually to approximately a 60% equity

exposure and a 40% fixed income exposure. A quarterly rebalance will occur to the extent such exposures deviate by greater than two percent (2%) in order to maintain an approximate 60% equity/40% fixed income exposure.

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;
- Creation Units will be continuously redeemable at the net asset value (the “NAV”) next determined after receipt of a request for redemption by the Fund;
- Shares of the Fund will be listed and traded on NYSE Arca or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the “Exchange”)<sup>1</sup>;
- The underlying ETFs comprising the Index will meet all conditions set forth in a relevant class relief letter, will have received individual relief from the Commission, or will be able to rely upon individual relief even though they are not named parties;
- The Fund will invest at least 80% of its assets in underlying ETFs comprising the Index that are liquid securities;
- The intra-day indicative value of the Index will be publicly disseminated every 15 seconds through the facilities of the Consolidated Tape Association (“CTA”);
- NYSE Arca (or such other Exchange as the Shares are in the future listed) will disseminate continuously on a 15 second delay throughout the trading day, through the facilities of the CTA, the last sale price of the Shares, and NYSE Arca (or other

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<sup>1</sup> Further, Requestors represent in the Letter that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are, or will become, effective pursuant to Section 19(b) of the Exchange Act.

listing Exchange), market data vendors or other information provider will disseminate, every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;

- On each business day, before commencement of trading in Shares in the core trading session on NYSE Arca, the Fund will disclose on its website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security, or other asset or instrument underlying the holding, if any; for ETFs, quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio;
- The Fund's website will also contain the following information for the Fund: (i) the prior business day's NAV, (ii) closing NAV, (iii) the closing market price, and (iv) Fund holdings;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value of the liquidity of securities and other assets held by the Fund, the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Trust expects that arbitrageurs will take advantage of price variations between the Fund's market price and its NAV; and
- The Trust expects a close alignment between the market price of Shares and the Fund's NAV.

## 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.<sup>2</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of 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 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

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<sup>2</sup> 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.

is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund,<sup>3</sup> 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 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.<sup>4</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and 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 Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by 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 the Fund, thus

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<sup>3</sup> The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m. ET.

<sup>4</sup> 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.

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 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.<sup>5</sup>

#### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to 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 the Fund, thus permitting the Fund to redeem Shares

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<sup>5</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is 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 on the Requestors representations in the Letter, that the provision of notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

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 Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or conditions may require a different response. In the event that any material change occurs in the facts or representations in the Letter, transactions in Shares of the Funds must be discontinued, pending presentation of the facts for our consideration. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 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 exemption. 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.<sup>6</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(6) and (9).