



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 26, 2016

Via Facsimile & U.S. Mail

Frederick S. Marius, Esq.
Chief Legal Officer, Vice President and Corporate Secretary
Eaton Vance Management
Two International Place
Boston, MA 02110

**Re: Eaton Vance ETMF Trust
Request for Exemption Under Rule 14e-5**

Dear Mr. Marius:

We are responding to your letter dated February 25, 2016, which requests an exemption from Rule 14e-5 under the Securities Exchange Act of 1934. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed photocopy of your correspondence. Unless otherwise noted, capitalized terms in our letter have the same meaning as in your letter.

On the basis of the representations made and the facts presented in your letter, as supplemented by telephone conversations with the staff of the United States Securities and Exchange Commission ("Commission"), the Commission hereby grants an exemption from Rule 14e-5. The exemption operates to permit any broker-dealer acting as a dealer manager of a tender offer for a security in which any of the Initial ETMFs invests to redeem Shares in Creation Unit size aggregations for a redemption Basket that may include a subject security or related security as defined under Rule 14e-5(c). The exemption also operates to permit such persons, described in your letter as covered persons within the meaning of Rule 14e-5(c)(3)(ii), to engage in secondary market transactions with respect to Shares after the first public announcement of and during such tender offer, given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities. In addition, the exemption permits such covered persons to make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Shares.

To the extent that a Trust or any of the Initial ETMFs constitute a covered person within the meaning of Rule 14e-5(c)(3)(iv), each also may rely upon the exemption granted herein. We note in particular that our grant of an exemption is conditioned upon the following:

- no purchases of subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer would be effected for the purpose of facilitating a tender offer;
- any purchases of a portfolio security by a dealer-manager during a tender offer will be effected as adjustments to a basket of securities in the ordinary course of business as a result of a change in the composition of the Fund's portfolio; and
- except for the relief specifically granted herein, any broker-dealer acting as a dealer-manager of a tender offer will comply with Rule 14e-5.

The foregoing exemption is based solely on the representations and the facts presented in your letter, as supplemented by telephone conversations with the Commission staff. The exemption granted is strictly limited to the application of Rule 14e-5 to the transactions described in your letter with respect to the Initial ETMFs. These transactions should be discontinued pending further consultations with the Commission staff if any of the representations or facts set forth in your letter change. In addition, this exemption is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Exchange Act Sections 10(b) and 14(e), and Rules 10b-5 and 14e-3 thereunder. The transactions and covered persons within the scope of this exemption must comply with these and any other applicable provisions of the federal securities laws. The Division of Corporation Finance expresses no view on any other questions that may be raised by the transactions described in your letter, including, but not limited to, the adequacy of disclosure concerning, and the applicability of any other federal or state laws to, such transactions.

Sincerely,

For the Commission,
By the Division of Corporation Finance
pursuant to delegated authority,

/s/ Ted Yu

Ted Yu
Chief
Office of Mergers and Acquisitions



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February 25, 2016

Josephine J. Tao
Assistant Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Exemptive, Interpretive or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-10; 10b-17; 11d1-2; 14e-5; 15c1-5; and 15c1-6; Rules 101 and 102 of Regulation M promulgated under the Securities Exchange Act of 1934.

Dear Ms. Tao:

Each of Eaton Vance NextShares Trust and Eaton Vance NextShares Trust II (each, a "Trust") is a Massachusetts business trust registered as an open-end management investment company under the Investment Company Act of 1940 ("1940 Act"). The Trusts currently intend to introduce 18 series (each such series, an "Initial ETMF"), each of which would operate as an exchange-traded managed fund ("ETMF"), as described below.

Each Trust, on behalf of itself, the Initial ETMFs and any future ETMFs adhering to the representations and conditions in this letter, and any national securities exchange or national securities association on or through which ETMF shares subsequently trade (each such market, an "Exchange"), and persons or entities engaging in transactions in shares issued by an ETMF ("Shares"), as the case may be, requests that the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") grant exemptive, interpretive or no-action relief from Section 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rules 10b-10, 10b-17,

11d1-2, 15c1-5 and 15c1-6 under the Exchange Act and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as discussed below.¹ Each Trust, on behalf of itself, each Initial ETMF and Authorized Participants (as defined below) that act as dealer-managers of tender offers, as applicable, requests that the Commission grant exemptive relief from Rule 14e-5 under the Exchange Act in connection with transactions that involve “subject securities” and “related securities” (as defined in Rule 14e-5(c)(6) and (7)) that are included in a “Basket,” as described below.

Each Trust will continuously issue and redeem Shares in specified aggregations of Shares (each aggregation, a “Creation Unit”) at net asset value. Each Trust has filed a registration statement on Form N-1A and its Shares will be listed on an Exchange.² Each Trust will be overseen by a board of trustees (the “Board”) which will maintain the composition requirements of Section 10 of the 1940 Act. Each ETMF will adopt fundamental policies consistent with the 1940 Act and be classified as “diversified” or “non-diversified” under the 1940 Act. Each ETMF intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company (“RIC”) diversification requirements of the Internal Revenue Code of 1986, as amended (the “Code”). Each ETMF will be actively managed by an investment adviser registered under the Investment Advisers Act of 1940 (“Adviser”). The Adviser may enter into subadvisory agreements with other investment advisers to act as subadvisers to ETMFs (each, a “Subadviser”).

¹ The requestors are also seeking relief for future, unidentified ETMFs that will be structured in the same way as described below, but may have other investment objectives.

² The Commission has approved Nasdaq Rule 5745 governing the listing and trading of Shares. *See* Exchange Act Release No. 73562 (Nov. 7, 2014).

The SEC staff (“SEC Staff”) has previously issued relief similar to that requested herein to actively managed exchange-traded funds (“ETFs”) listed and traded on a national securities exchange that meet certain conditions.³ Each Trust is not an actively managed ETF and therefore is not entitled to rely on such relief. Nevertheless, each Trust notes that the ETMF structure is similar to the actively managed ETF structure in that ETMFs will be investment companies that issue shares that individually trade on an Exchange, but can be purchased from and redeemed with the issuing investment company only in large aggregations. The principal difference between ETMFs and ETFs is that, unlike with the trading in ETF shares, the trading price of an ETMF’s Shares will be directly linked to the ETMF’s end-of-day net asset value (“NAV”).⁴ In connection with this “NAV-Based Trading,” all bids, offers and execution prices will be expressed as a market-determined premium or discount (*e.g.*, +\$0.01, -\$0.02) to that day’s NAV.⁵ For each trade, the premium or discount to NAV (which may be zero) is locked in at trade execution and the final transaction price (*i.e.*, NAV plus or minus the market-determined

³ See, *e.g.*, Letter from Josephine J. Tao to Foley & Lardner LLP regarding Bear Stearns Active ETF Trust, dated March 24, 2008; Letter from James A. Brigagliano to Clifford Chance US LLP regarding PowerShares Actively Managed ETF Trust, dated April 4, 2008; Letter from Josephine Tao to Wisdom Tree Trust, dated May 8, 2008 (“WisdomTree Letter”). In the WisdomTree Letter, the SEC Staff stated that, having repeatedly expressed its views on Section 11(d)(1) of the Exchange Act and on Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 with respect to actively managed ETFs, it would not respond to additional requests for relief from those provisions unless the ETFs presented novel or unusual issues. The SEC Staff subsequently revised its Division of Market Regulation Staff Legal Bulletin No. 9 (revised Sept. 10, 2010) to state that actively managed ETFs could rely on the exceptions in Rules 101(c)(4) and 102(d)(4) of Regulation M under the Exchange Act (“Prior Regulation M Relief”). The Commission subsequently issued an order granting a limited exemption from Rule 10b-17 under the Exchange Act to any issuer of an actively managed ETF. See Exchange Act Release No. 67215 (June 19, 2012) (“Prior 10b-17 Relief”). The SEC Staff continues to issue exemptive relief with respect to Rule 14e-5 under the Exchange Act to actively managed ETFs. See, *e.g.*, Letter from Michele M. Anderson to Chapman and Cutler LLP regarding First Trust Exchange-Traded Fund III, dated Dec. 18, 2014 (“Prior 14e-5 Relief”).

⁴ Aspects of NAV-Based Trading are protected intellectual property described in one or more of U.S. Patent Nos. 7,444,300, 7,496,531, 7,689,501, 8,131,621, 8,306,901, 8,332,307 and 8,452,682 and in pending patent applications. The methodology for calculating NAV will be fully disclosed in the prospectus. Additionally, any modification to the methodology used to calculate NAV will be fully disclosed to current and prospective investors prior to implementation.

⁵ Market data feeds underlying quotation and transaction systems may report bids, offers and execution prices in NAV-Based Trading with reference to a numeric base value (*e.g.*, 100), depending upon system parameters.

premium/discount to NAV) is determined at the end of the day when the ETMF's NAV is computed. Because all transaction prices are based on an end-of-day NAV, ETMFs will not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV, as is currently the case with actively managed ETFs. While NAV-Based Trading is different than trading in ETF shares, ETMFs should not raise any significant new regulatory issues with respect to the requested relief.

I. ETMF Operations

The Initial ETMFs and their Investment Objectives

The Trusts intend to offer the following Initial ETMFs.⁶

Eaton Vance Balanced NextShares™

The investment objective of this ETMF is to provide current income and long-term growth of capital. The ETMF normally will invest between 50% and 75% of its net assets in equity securities and between 25% and 50% of its net assets in fixed-income securities.

Eaton Vance Global Dividend Income NextShares™

The investment objective of this Fund is to provide current income and long-term growth of capital. The ETMF normally will invest primarily in common stocks and, in the adviser's discretion, preferred stocks of U.S. and foreign companies that pay dividends.

Eaton Vance Growth NextShares™

The investment objective of this ETMF is total return. The ETMF will invest in a broadly diversified selection of equity securities, seeking companies with above-average growth

⁶ Each Trust will operate pursuant to an exemptive order issued by the Commission under the 1940 Act. *See* Investment Company Act Rel. No. 31361 (Dec. 2, 2014).

and financial strength. Under normal market conditions, the ETMF will invest primarily in large-cap companies.

Eaton Vance Large-Cap Value NextShares™

The investment objective of this ETMF is total return. Under normal market conditions, the ETMF will invest primarily in value stocks of large-cap companies.

Eaton Vance Richard Bernstein All Asset Strategy NextShares™

The investment objective of this ETMF is total return. In seeking its investment objective, the ETMF will have flexibility to allocate its assets in markets around the world and among various asset classes, including equity, fixed-income, commodity, currency and cash investments.

Eaton Vance Richard Bernstein Equity Strategy NextShares™

The investment objective of this ETMF is total return. Under normal market conditions, the ETMF will invest primarily in equity securities and derivative instruments that provide exposure to equity securities.

Eaton Vance Small-Cap NextShares™

The investment objective of this ETMF is long-term capital appreciation. The ETMF normally will invest primarily in equity securities of small-cap companies.

Eaton Vance Stock NextShares™

The investment objective of this ETMF is to achieve long-term capital appreciation by investing in a diversified portfolio of equity securities. The ETMF normally will invest primarily in a diversified portfolio of common stocks.

Parametric Emerging Markets NextShares™

The investment objective of this ETMF is long-term capital appreciation. The ETMF normally will invest primarily in equity securities of companies located in emerging market countries.

Parametric International Equity NextShares™

The investment objective of this ETMF is long-term capital appreciation. The ETMF normally will invest primarily in companies domiciled in developed markets outside of the United States, including securities trading in the form of depositary receipts.

Eaton Vance Bond NextShares™

The investment objective of this ETMF is total return. The ETMF normally will invest primarily in bonds and other fixed and floating-rate income instruments.

Eaton Vance TABS 5-to-15 Year Laddered Municipal Bond NextShares™

The investment objective of this ETMF is to provide current income exempt from regular federal income tax. The ETMF normally will invest primarily in municipal obligations with remaining maturities of between 5 and 15 years, the interest on which is exempt from regular federal income tax.

Eaton Vance Floating-Rate & High Income NextShares™

The investment objective of this ETMF is to provide a high level of current income. The ETMF normally will invest primarily in a combination of income-producing floating rate loans and other floating rate debt securities and high-yield corporate bonds.

Eaton Vance Global Macro Absolute Return NextShares™

The investment objective of this ETMF is total return. The ETMF will seek its investment objective by investing in securities, derivatives and other instruments to establish long and short investment exposures around the world.

Eaton Vance Government Obligations NextShares™

The investment objective of this ETMF is to provide a high current return. The ETMF normally will invest primarily in securities issued, backed or otherwise guaranteed by the U.S. Government, its agencies or instrumentalities.

Eaton Vance High Income Opportunities NextShares™

The primary investment objective of this ETMF is to provide a high level of current income. The ETMF will seek growth of capital as a secondary investment objective. The ETMF normally will invest primarily in fixed-income securities, including preferred stocks, senior and subordinated floating rate loans, and convertible securities.

Eaton Vance High Yield Municipal Income NextShares™

The investment objective of this ETMF is to provide high current income exempt from regular federal income tax. The ETMF normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

Eaton Vance National Municipal Income NextShares™

The investment objective of this ETMF is to provide current income exempt from regular federal income tax. The ETMF normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

Sales and Redemptions of Creation Units

Each Trust will issue and redeem Shares of ETMFs in Creation Units through a broker-dealer registered under the Exchange Act (the “Distributor”) acting on an agency basis and serving as each ETMF’s “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act.⁷ Subject to certain exceptions described below, Creation Units of an ETMF will be purchased by making a deposit of the instruments specified by the ETMF for making a purchase (“Deposit Instruments”), and shareholders redeeming Creation Units will receive a transfer of instruments specified by the ETMF for meeting a redemption (“Redemption Instruments”).⁸ 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 are expected to be identical and are referred to herein as the “Basket.” Deposit Instruments and Redemption Instruments may include cash, securities and/or other transferable investment assets. To the extent there is a difference between the NAV of a Creation Unit and the aggregate market value of the Basket exchanged for the Creation Unit, the party conveying the lower value will pay to the other an amount in cash equal to that difference (the “Balancing Amount”).

To preserve the confidentiality of an ETMF’s trading activities, each Trust anticipates that the Basket will normally not be a *pro rata* slice of the positions in the ETMF portfolio (“Portfolio Positions”). Rather, instruments being acquired by the Adviser for the ETMF portfolio will generally be excluded from the Basket until their purchase is completed, and

⁷ The number of Shares constituting a Creation Unit will be set by the Adviser. Each Trust expects a Creation Unit to consist of a specified number of Shares between 5,000 and 50,000 Shares. The anticipated Creation Unit size is somewhat smaller than customary for ETFs and should support secondary market trading efficiency by facilitating tighter market maker inventory management.

⁸ Creation Units of Shares will be redeemable at the next determined NAV of each ETMF on each business day in accordance with the 1940 Act.

instruments being sold may not be removed from the Basket until the sale program is completed. Further, when deemed by the Adviser to be in the best interest of an ETMF and its shareholders, other Portfolio Positions may be excluded from the Basket. Whenever Portfolio Positions are excluded from the Basket, the Basket may include proportionately more cash than is in the portfolio, with such additional cash substituting for the excluded Portfolio Positions.

An ETMF may permit an Authorized Participant (as defined below) to deposit or receive, as applicable, cash in lieu of some or all of the Basket instruments, solely because: (a) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (b) such instruments are not eligible for trading by the Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (c) a holder of Shares of an ETMF investing in foreign instruments would be subject to unfavorable income tax treatment if the holder received redemption proceeds in kind. No other Basket substitutions will be permitted.

In addition, an ETMF that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely on a cash basis. In such an instance, the ETMF will announce, before the open of trading on a given business day, that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash. An ETMF may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to require the purchase or redemption, as applicable, to be made entirely in cash.

Each business day, before the open of trading on the listing Exchange, the Adviser will cause the Basket, including the names and quantities of the securities and other instruments in the Basket and the estimated Balancing Amount, for that day to be disseminated through the National Securities Clearing Corporation ("NSCC"), a clearing agency registered with the

Commission and affiliated with the Depository Trust Company (“DTC”). The published Basket will apply until a new Basket is announced, and there will be no intra-day changes to the Basket except to correct errors in the published Basket. The Adviser will also make available on a daily basis information about the previous day’s Balancing Amount.

Authorized Participants

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an “Authorized Participant,” which is either: (a) a “participating party” (*i.e.*, a broker or other participant in the Continuous Net Settlement (“CNS”) System of the NSCC) or (b) a DTC participant (“DTC Participant”), which in any case has executed an agreement with the Distributor (“Participant Agreement”). An investor does not have to be an Authorized Participant to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant.

Transaction Fees

All persons purchasing or redeeming Creation Units are expected to incur a Transaction Fee to cover the estimated cost to the ETMF of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs incurred in converting the Basket to the desired portfolio composition. Transaction Fees will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been authorized by the Board and determined by the Adviser to be appropriate to defray the expenses that the ETMF incurs when an investor purchases or redeems Creation Units.⁹ The purpose of Transaction Fees is to protect an ETMF’s existing shareholders from the dilutive

⁹ In all cases, the Transaction Fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

costs associated with the purchase and redemption of Creation Units. Transaction Fees will differ among ETMFs and may vary over time for an ETMF, depending on the estimated trading costs related to a particular ETMF's Portfolio Positions and Basket, processing costs and other considerations. Transaction Fees may include fixed amounts per creation or redemption event, amounts varying with the number of Creation Units purchased or redeemed, and amounts varying based on the time an order is placed. ETMFs that permit the substitution of cash for Basket instruments may impose higher Transactions Fees on the substituted cash amount. In addition, investors purchasing or redeeming Creation Units that clear through DTC may pay a higher Transaction Fee than on purchases or redemptions that clear through NSCC because each Trust expects DTC generally to charge ETMFs more than NSCC in connection with Creation Unit transactions. The Transaction Fees applicable to purchases and redemptions from each ETMF on a given business day will be disseminated through NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free website.¹⁰

Sales charges (or loads) will not be imposed by any ETMF on purchases or redemptions of Creation Units or secondary market transactions in Shares. Investors purchasing or selling Shares in the secondary market may incur customary brokerage commissions, fees and expenses.

Intraday Indicative Values

Each Trust will arrange for the continuous calculation by an independent third party and publication through the NASDAQ OMX Global Index Data Service throughout the regular trading session of the listing Exchange (generally 9:30 a.m. to 4:00 p.m. ET) each business day

¹⁰ The free website will be www.eatonvance.com or www.nextshares.com.

of an intraday indicative value (“IIV”) of each ETMF’s Shares.¹¹ IIVs will be disseminated by one or more major market data vendors at intervals of not more than 15 minutes during trading on an Exchange.¹² The sole purpose of IIVs in the context of ETMFs is to help investors determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*i.e.*, if an investor wants to acquire approximately \$5,000 of an ETMF, how many Shares should the investor buy?).¹³

Portfolio Holdings Disclosure

ETMFs will not make their full Portfolio Positions available on a daily basis. Instead, ETMFs will disclose their holdings only at periodic intervals, and with a lag. All ETMFs will disclose their holdings in full at least once quarterly, with a lag of not more than 60 days, in compliance with the requirements applicable to open-end investment companies. As a matter of practice, many mutual funds provide public disclosure of their holdings more frequently, and on a more timely basis (such as monthly with a 30-day lag). The disclosure practices of ETMFs are expected to be similar to those of mutual funds holding similar types of investments.

¹¹ Neither Trust nor any ETMF will be involved in, or responsible for, the calculation or dissemination of any such IIV and will make no warranty as to its accuracy.

¹² Unlike for ETFs, which arrange for IIVs to be disseminated every 15 seconds, IIVs for ETMFs will not provide pricing signals for market intermediaries or other buyers and sellers of Shares seeking to estimate the difference between the value of the ETMF’s portfolio and the price at which Shares are currently trading. In NAV-Based Trading, the secondary market premium/discount that applies to an ETMF is always fully transparent and does not depend on dissemination of IIVs.

¹³ Because IIVs will generally differ from end-of-day NAV, they cannot be used to calculate with precision the dollar value of a prescribed number of Shares to be bought or sold. Especially during periods of volatile market conditions and for transactions executed early in the trading day, buyers and sellers of ETMFs face the risk that the value of their purchases and sales may differ materially from intended levels. To seek to ensure that ETMF investors understand the risk that the value of their purchases and sales may differ from intended levels, each ETMF’s registration statement, website, and advertising and marketing materials will include prominent disclosure of this risk. In addition, when a retail ETMF order is submitted electronically, the investor will receive a prompt reminding the investor of the contingent pricing nature of Shares and the other principal distinctions of investing in ETMFs, and will be required to acknowledge that he or she has read and understood this information before the order is finalized.

The mechanism that connects trading prices of Shares to NAV in NAV-Based Trading does not require contemporaneous disclosure of Portfolio Positions to function effectively, as described below. Because disclosing holdings in real-time can facilitate front-running of portfolio trades and enable copycat investors to replicate a fund's portfolio positioning, active managers have to date largely avoided the transparent active ETF model. By removing the requirement for portfolio transparency, ETMFs have the potential to provide investors with access to a broad range of active strategies.

Buying and Selling Shares on the Exchange

ETMF Shares will be purchased and sold in the secondary market at prices based on the next-determined NAV. All bids, offers and execution prices will be expressed as a premium/discount (which may be zero) to the ETMF's next-determined NAV (e.g., NAV-\$0.01, NAV+\$0.01). An ETMF's NAV will be determined each business day, normally as of 4:00 p.m. Eastern Time. Trade executions will be binding at the time orders are matched on the Exchange's facilities, with the transaction prices contingent upon the determination of NAV.

- *Trading Premiums and Discounts.* Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which ETMF Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for ETMF Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of ETMF Shares, the cost and availability of borrowing Shares, competition among market makers, the ETMF Share inventory positions and inventory strategies of market makers and other market participants, the profitability requirements and business objectives of market makers, and the volume of ETMF

Share trading. Reflecting such market factors, prices for ETMF Shares in the secondary market may be above, at or below NAV.

- *Transmitting and Processing Orders.* Member firms will utilize existing order types and interfaces to transmit ETMF Share bids and offers to the Exchange, which will process ETMF Share trades like trades in shares of conventional ETFs and other listed securities. In the systems used to transmit and process transactions in ETMF Shares, an ETMF's next-determined NAV will be represented by a proxy price (*e.g.*, 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.*, NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01). At the start of each trading day, the price will be reset to the proxy price.

To avoid potential investor confusion, the listing Exchange will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices for ETMFs that are made available to the investing public follow the "NAV-\$0.01/NAV+\$0.01" (or similar) display format, rather than displaying proxy prices. All ETMFs listed on the Exchange will have a unique identifier associated with their ticker symbols, which will indicate that their Shares are traded using NAV-Based Trading. The listing Exchange makes available to member firms and market data services certain proprietary data feeds ("Exchange Data Feeds") that are designed to supplement the market information disseminated through the consolidated tape ("Consolidated Tape"). The Exchange will use an Exchange Data Feed to disseminate intraday price and quote data for ETMFs in real time in the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. Member firms could use the Exchange Data Feed to source intraday ETMF prices for presentation to the investing public in the "NAV-

\$0.01/NAV+\$0.01” (or similar) display format. Alternatively, member firms could source intraday ETMF prices in proxy price format from the Consolidated Tape and use a simple algorithm to convert prices into the “NAV-\$0.01/NAV+\$0.01” (or similar) display format.

- *Intraday Reporting of Quotes and Trades.* All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape¹⁴ and separately disseminated to member firms and market data services through an Exchange Data Feed. The Exchange will also provide the member firms participating in each ETMF Share trade with a contemporaneous notice of trade execution, indicating the number of ETMF Shares bought or sold and the executed premium/discount to NAV.¹⁵

- *Final Trade Pricing, Reporting and Settlement.* All executed ETMF Share trades will be recorded and stored intraday by the Exchange to await the calculation of the ETMF’s end-of-day NAV and the determination of final trade pricing. After an ETMF’s NAV is calculated and provided to the Exchange, the Exchange will price each ETMF Share trade entered into during the day at the ETMF’s NAV plus/minus the trade’s executed premium/discount. Using the final trade price, each executed ETMF Share trade will then be disseminated to member firms and market data services through the Exchange Data Feed used to report ETMF Share trades, and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing. After the pricing is finalized, the Exchange will deliver the ETMF Share trading data to NSCC for clearance and settlement, following the same processes

¹⁴ Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for ETMFs using a proxy price format. As noted, the listing Exchange will separately report real-time execution prices and quotes to member firms and providers of market data services in the “NAV-\$0.01/NAV+\$0.01” (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for ETMFs that are made available to the investing public follow the same display format.

¹⁵ All orders to buy or sell an ETMF Share that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

used for the clearance and settlement of trades in conventional ETFs and other exchange-traded securities.

Trading Efficiency

In NAV-Based Trading, a market maker assumes no intraday market risk in connection with its Share inventory positions because all Share transaction prices are based on the next-determined NAV. Whether a Fund's underlying value goes up or down over the course of a trading day will not affect how much a market maker earns by selling (or buying) Shares in the market at a net premium (discount) to NAV, and then purchasing (redeeming) an offsetting number of Shares at the end of the day in transactions with the Fund. No intraday market risk means no requirement for intraday hedging, and therefore no associated requirement for portfolio holdings disclosure to maintain a tight relationship between Share trading prices and NAV.

A market maker that purchases (or redeems) a Creation Unit at the end of a trading day to offset its net intraday sales (purchases) of a Creation Unit quantity of Shares will earn profits to the extent that it either sells (buys) Shares at an aggregate premium (discount) to NAV or buys (sells) a Creation Unit-equivalent quantity of Basket instruments at an aggregate discount (premium) to their end-of-day values, and the net amount of Share premium (discount) plus Basket discount (premium) exceeds the transaction fee that applies to a purchase (redemption) of a Creation Unit.¹⁶

Different from conventionally traded ETFs, trading in Shares offers market makers a profit opportunity that is not based on the ability to arbitrage differences between share trading

¹⁶ The market maker profit equation is simplified for cash creations and redemptions. A market maker who purchases (or redeems) a Creation Unit in cash to offset its net intraday sales (purchases) of a Creation Unit quantity of Shares will earn profits to the extent that it sells (buys) Shares in the secondary market at an aggregate premium (discount) to NAV that exceeds the transaction fee that applies to a cash creation (redemption) of a Creation Unit.

prices and underlying portfolio values or requiring the management of intraday market risk.¹⁷ To realize profits from market making in Shares, a market maker holding short (or long) positions in Shares accumulated intraday need only transact with the Fund to purchase (redeem) a corresponding number of Creation Units of Shares, buy (sell) the equivalent quantities of Basket instruments at market-closing or better prices, and offload any remaining sub-Creation Unit Share inventory through secondary market transactions prior to the close.¹⁸

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable ETMFs to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. Further, because the mechanism that underlies efficient trading of Shares does not involve arbitrage or trading in portfolio positions that are not included in the Basket, the need for daily portfolio holdings disclosure to achieve tight markets in Shares is eliminated.

The mechanisms supporting efficient trading of Shares are equally applicable across different asset classes and investment strategies. An ETMF can hold relatively illiquid assets and still trade with tight bid-offer spreads and narrow premiums/discounts to NAV by creating and redeeming Shares in cash. Unlike for ETFs, portfolio holdings that are not included in a Basket will not influence how tightly the Shares will trade.

¹⁷ In a typical ETF, intermediaries enter into arbitrage transactions to take advantage of deviations between market price and NAV, and that arbitrage is the mechanism that is understood to keep the market price and the NAV of ETFs aligned.

¹⁸ Market makers in Shares are expected generally to seek to minimize their exposure to price risk by holding little or no overnight Share inventory. By establishing Creation Unit sizes that are somewhat smaller (*i.e.*, in a range of 5,000 to 50,000 Shares) than is customary for ETFs, ETMFs will support secondary market trading efficiency by facilitating tighter market maker inventory management because it facilitates closing out positions at the end of each trading day. To the extent that market makers hold small positions in Shares overnight, they are expected to aggregate such holdings with other risk positions and transact at or near the market close to buy or sell offsetting positions in appropriate, broad-based hedging instruments, such as S&P 500 and other index futures and ETFs. Such hedging of overnight inventory risk on a macro basis does not require disclosure of portfolio positions that are not included in the daily Basket.

II. Relief Requested

Rule 101 of Regulation M

Subject to certain enumerated exceptions, Rule 101 of Regulation M prohibits a “distribution participant,” in connection with a distribution of securities, from bidding for or purchasing or from attempting to induce any person to bid for or purchase, a “covered security” during the applicable restricted period. “Distribution participant” is defined in Rule 100(b) to include an underwriter or prospective underwriter in a particular distribution of securities, or any broker, dealer or other person who has agreed to participate or is participating in such distribution. Rule 100(b) of Regulation M defines “distribution” for purposes of such Rule as an offering of securities, whether or not subject to registration under the Securities Act of 1933, as amended, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. We understand that under certain circumstances, broker-dealers purchasing a Creation Unit could be deemed to be an “underwriter” or “distribution participant” as those terms are defined in Rule 100(b).

Each Trust respectfully requests that the Commission or SEC Staff grant exemptive, interpretive or no-action relief from Rule 101, as discussed below, to permit persons participating in a distribution of Shares to bid for or purchase, or engage in other secondary market transactions in, such Shares during their participation in such distribution.

Paragraph (c)(4) of Rule 101 exempts from its application, among other things, redeemable securities issued by an open-end management investment company (as such terms are used in the 1940 Act). Each Trust will be registered as an open-end management investment company under the 1940 Act. Although the individual Shares are not redeemable except in Creation Unit size aggregations, the trading prices of Shares will be based on NAV, as described

above. As discussed above, because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. On any business day, an ETMF market maker can earn profits by entering into transactions with the ETMF to purchase (redeem) the number of Creation Units corresponding to the net amount of Shares the market maker has sold (purchased) that day in the secondary market, buying (selling) the equivalent quantities of Basket instruments and offloading any sub-Creation Unit Share inventory in market transactions prior to the market close. The market maker's profit will equal the aggregate net premium (discount) versus NAV at which the Shares are sold (bought) plus the aggregate net discount (premium) versus market-closing prices at which Basket instruments are bought (sold), less the Transaction Fee that applies. No intraday hedging is necessary to manage the market maker's risk position, and any required overnight hedging can be limited to amounts readily addressable on a macro basis by the ETMF maintaining relatively small Creation Unit sizes. As a result, there should be little disparity between the Shares' trading price and their NAV per Share. The Shares should routinely trade at tight bid-ask spreads and narrow premiums and discounts to net asset value. Accordingly, the rationale for exempting redeemable securities of open-end management investment companies from the application of Rule 101 is equally applicable to the Shares. Although redemption is subject to the minimum condition of tendering a Creation Unit, each Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the special nature of such offerings that open-end management investment company and unit investment trust securities are exempted under paragraph (c)(4). Without such an exemption, they could not operate as intended. In view of the foregoing, each Trust requests that the SEC Staff confirm that as a

result of registration of the Trust as an open-end management investment company and the redeemable nature of the Shares in Creation Unit aggregations, transactions in the Shares would be exempted from Rule 101 on the basis of the exception contained in paragraph (c)(4) of such Rule.

Each Trust also respectfully requests relief from the provisions of Rule 101 to the extent necessary to permit persons or entities that may be deemed to be participating in the distribution of the Shares or a Portfolio Position of the ETMF to tender Shares for redemption in Creation Unit size aggregations and to receive as part of redemption proceeds the Redemption Instruments of the ETMF.

In this regard, each Trust requests that the SEC Staff provide an interpretation that the tender of the Shares to the Trust for redemption and the receipt of Redemption Instruments upon redemption do not constitute an attempt to induce any person to bid for or purchase a covered security during an applicable restricted period for purposes of Rule 101. Redemption entails no separate bid for any of the Redemption Instruments. Absent unusual circumstances, each Trust will not purchase Redemption Instruments in the secondary market to fulfill a redemption request. Therefore, redemptions of Shares cannot be expected to affect the market price of the Redemption Instruments. In addition, redemptions would not be made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of Shares or the securities received in exchange for the Shares redeemed.

Rule 102 of Regulation M

Each Trust also requests that the Commission confirm that as a result of registration of the Trust as an open-end management investment company and the redeemable nature of the Shares in Creation Unit size aggregations that, for the reasons previously stated under the above

request with respect to the exemption under Rule 101(c)(4), transactions in the Shares would be exempted from Rule 102 on the basis of the exception contained in paragraph (d)(4) of such Rule. Alternatively, each Trust respectfully requests that the Commission grant an exemption under paragraph (e) of Rule 102 to such effect. Application of Rule 102 in this context would not further the anti-manipulative purposes underlying the Rule.

The purpose of Rule 102 is to prevent persons from manipulating the price of a security during a distribution and to protect the integrity of the offering process by prohibiting activities that could artificially influence the market for that particular security. For the reasons described in connection with the requested Rule 101 relief, redemption transactions and secondary market transactions in the Shares are not viable means to manipulate the price of a security in an ETMF's portfolio during a distribution of such security. Shares may be redeemed in Creation Units from each Trust at the NAV of the Shares. Each Trust believes that the redemption by the Trust of the Shares at NAV in consideration principally for Redemption Instruments does not involve the abuses that Rule 102 was intended to prevent.

Rule 10b-10

Rule 10b-10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. Each Trust respectfully requests that the Commission provide exemptive relief from application of the Rule, as discussed below, with respect to the creation (*i.e.*, issuance) or redemption of Shares (all of which are in Creation Unit size aggregations). Neither Trust is requesting exemptive or interpretive relief from Rule 10b-10 in connection with purchases and sales of Shares in the secondary market.

The ETMF proposes that broker-dealers acting for their customers in either depositing Deposit Instruments in exchange for Creation Units or redeeming Shares in Creation Unit size aggregations for Redemption Instruments be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the identity, number and price of shares of individual Deposit Instruments included in the Basket tendered to the Trust for purposes of creation of Creation Units, or the identity, number and price of shares of Redemption Instruments to be delivered by the Trust to the redeeming holder. The composition of the Deposit Instruments required to be tendered to the Trust for creation purposes and of the Redemption Instruments to be delivered on redemption will be disseminated on each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This information will be made available to requesting broker-dealers or other persons through the NSCC. Each Trust anticipates that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable Deposit Instruments or the Redemption Instruments to be received on redemption, so that specific information on the Deposit Instruments or the Redemption Instruments to be received on redemption in the Rule 10b-10 notification would be redundant.

Each Trust agrees that any exemptive or interpretive relief under Rule 10b-10 with respect to creations and redemptions be subject to the following conditions:

- (1) Confirmation statements of creation and redemption transactions in Shares will contain all of the information specified in paragraph (a) of Rule 10b-10 other than identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer in the transaction;

(2) Any confirmation statement of a creation or redemption transaction in Shares that omits the identity, price, or number of shares of component securities will contain a statement that such omitted information will be provided to the customer upon request; and

(3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

Rule 10b-17

Rule 10b-17 requires an issuer of a class of publicly-traded securities to give notice of certain specified actions (e.g., dividends, stock splits, rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Specifically, Rule 10b-17(b)(1)(v)(a-b) require such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share¹⁹, and (b) for in-kind distributions, the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of such dividend or distribution. Paragraph (c) of the Rule, however, states that the Rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act. Except for the fact that Shares must be redeemed in Creation Units, each Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the foregoing that the Commission issued an order upon which each Trust may rely permitting each Trust to issue shares with limited redeemability while still treating each Trust like any other open-end investment company.

¹⁹ The Rule permits a reasonable approximation of the per share distribution to be provided if exact amounts cannot be given because of existing conversion rights which may be exercised during the notice period and may affect the per share cash distribution, as long as the actual per share distribution is subsequently provided on the record date.

In addition, compliance with Rule 10b-17(b)(1)(v)(a-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. Because of this inability to project the amount of any dividend ten days in advance of a record date, applying the timing requirements of 10b-17(b)(1)(v)(a-b) to the Fund would increase the chances that the Fund would mis-estimate the amount of any such dividend.

Each Trust represents that it will comply with the requirements of Rule 10b-17 (other than paragraphs (b)(1)(v)(a-b) thereof). Each Trust further represents that, as soon as practicable following the end of trading on the Exchange on the day prior to the ex-date (but not later than the last time at which the Exchange accepts information relating to distributions on such date) with respect to any distribution to be made by an ETMF, each Trust will provide notice to the Exchange containing the information required in Rule 10b-17(b)(1)(v)(a-b).

In the proposing release for Rule 10b-17 (the "Proposing Release")²⁰, in discussing the rights to receive dividends and other rights which accrue to holders of record of securities as of a record date, the Commission stated:

It has been the experience of the Commission and the securities industry that the failure of a publicly held company to provide a timely announcement of the record date with respect to these types of rights has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failure, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of such rights and were thus unable to take necessary steps to protect their interests. Further, sellers who have received the benefits of such rights as recordholders on the specified record date after having disposed of their securities, have also disposed of the cash or stock dividends or other rights received as such recordholders without knowledge of possible claims of purchasers

²⁰ Exchange Act Release No. 9076 (February 17, 1971).

of the underlying security to those rights. . . . In many instances, innocent buyers and sellers have suffered losses. In addition, some issuers have made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.

Each Trust respectfully submits that none of these concerns raised by the Commission in the Proposing Release²¹ will be implicated if the requested relief is granted. As set forth above, each Trust will comply with the requirements of Rule 10b-17 except for the timing requirements for notification of the actual amounts of the distributions under Rule 10b-17(b)(1)(v)(a-b). Accordingly, market participants will receive timely notification of the existence and timing of a pending distribution, and will be able to plan their transactions in Shares accordingly. As a result, there should be no confusion or opportunity for manipulation regarding parties' rights to receive distributions, which concerns inspired the Commission to propose and adopt Rule 10b-17. Therefore, the requested relief concerning the timing requirements of Rule 10b-17(b)(1)(v)(a-b) is consistent with the purposes underlying the adoption of Rule 10b-17 as outlined in the Proposing Release and Adopting Release. The exemption under paragraph (c) of Rule 10b-17, which covers open-end investment companies with fully redeemable shares, thus should be applicable to each Trust with respect to the timing requirements of Rule 10b-17(b)(1)(v)(a-b).

Section 11(d)(1) and Rule 11d1-2

Section 11(d)(1) of the Exchange Act generally prohibits a person who is a broker-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 it participated as a member of

²¹ The foregoing concerns were largely reiterated by the Commission in the release adopting Rule 10b-17. See Exchange Act Release No. 9192 (June 7, 1971) (the "Adopting Release").

a selling syndicate or group within thirty days prior to such transaction. Rule 11d1-2 provides an exemption from Section 11(d)(1) for securities issued by a registered open-end investment company or unit investment trust with respect to transactions by a broker-dealer who extends credit on such security, provided the person to whom credit has been extended has owned the security for more than thirty days.

The SEC Staff has previously issued relief to actively managed ETFs under Section 11(d)(1) and Rule 11d1-2 with respect to ETFs which meet certain conditions, and each Trust requests that similar relief be extended subject to substantially identical conditions.²² Specifically, each Trust seeks the following relief with respect to ETMFs 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 ETMF (“Qualifying ETMF”):

(1) an exemption from Section 11(d)(1) to permit broker-dealers (other than an ETMF’s Distributor) to treat Shares of Qualifying ETMFs, for purposes of Rule 11d1-2 under the Exchange Act, as securities issued by a registered open-end investment company as defined in the 1940 Act;

(2) an exemption from Section 11(d)(1) to permit broker-dealers that do not act as Authorized Participants for an ETMF, but that effect transactions in Shares of such ETMF 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 ETMFs in connection with secondary market transactions in such ETMF’s Shares, provided that the broker-dealer does not

²² See, Wisdom Tree Letter. See, also, Letter from Catherine McGuire to Securities Industry Association, dated Nov. 21, 2005 (“SIA Letter”), with respect to index-based ETFs.

(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 complex²³ any payment, compensation or other economic incentive to promote or sell the Shares of the ETMF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C).

(3) 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 ETMFs 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 ETMF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(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 ETMF before thirty days have passed from the date that the ETMF'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).

²³ For purposes of this relief request, a "fund complex" means the issuer of the ETMF Shares, any other issuer of ETMF Shares that holds itself out to investors as a related company for purposes of investment or investor services, any investment adviser of the ETMF, the Distributor for the ETMF, or any affiliated person (as defined in the 1940 Act) of an investment adviser and the Distributor.

Rule 14e-5

Rule 14e-5 was originally promulgated as Rule 10b-13 under the Exchange Act to safeguard the interests of persons who sell their securities in response to a tender offer.²⁴ Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging to purchase any equity securities that are the subject of a tender offer (“subject securities”) or any securities immediately convertible into, exchangeable for, or exercisable for subject securities (“related securities”) except as part of such tender offer. The term “covered person” includes, among others, a dealer-manager of a tender offer. The fact that most Authorized Participants are broker-dealers implicates Rule 14e-5 because the term “covered person” includes a dealer-manager of a tender offer. The term “covered person” also includes any person acting, directly or indirectly, in concert with other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities. Therefore, each Trust also is seeking relief in the event it or the ETMF may be deemed to be a “covered person” by virtue of the Participant Agreements pertaining to the Trust and the ETMF.

In order to address situations in which an Authorized Participant acts as a dealer-manager of a tender offer, and a subject security or a related security is part of a group of securities that is received by the ETMF when it issues a Creation Unit or part of a group of securities that the ETMF distributes when it redeems a Creation Unit (*i.e.*, Deposit Instruments or Redemption Instruments in the Basket), each Trust respectfully requests that the Commission grant an exemption from Rule 14e-5 as it applies to such Authorized Participants. The exemption would

²⁴ Exchange Act Release No. 8712 (Oct. 8, 1969) (the “1969 Adopting Release”). In this regard, the 1969 Adopting Release noted that “[w]hen securities are purchased for a consideration greater than that of the tender offer price, this operates to the disadvantage of the security holders who have already deposited their securities and who are unable to withdraw them in order to obtain the advantage of possible resulting higher market prices.”

permit any such Authorized Participant to execute transactions that include, or are deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, but that are not effected for the purposes of facilitating a tender offer and that are conducted in the ordinary course of business (in each case, from the time of the public announcement of the tender offer until the tender offer expires). In this regard, an Authorized Participant's ordinary course of business includes: (1) redeeming Shares of the ETMF in Creation Unit size aggregations for Redemption Instruments in the Basket that may include a subject security or a related security; and (2) engaging in secondary market transactions in Shares. With respect to redemptions, each Trust notes that the acquisition of individual securities held by the ETMF by means of redemptions of Shares would be impractical and extremely inefficient in view of the relatively small number of shares of any one security included in a Basket and the requirement that a minimum number of Shares (*i.e.*, a Creation Unit) be redeemed. Redemptions of and secondary market transactions in Shares under the circumstances described would not appear to result in the abuses at which Rule 14e-5 is directed.

In addition to the above request for relief, each Trust also is requesting exemptive relief in connection with purchases of Creation Units of Shares by an Authorized Participant acting as a dealer-manager of a tender offer. In this regard, in connection with purchasing Creation Units pursuant to the terms of its Participant Agreement, an Authorized Participant may seek to purchase in the secondary market securities comprising a Basket that includes, with respect to a tender offer for which it acts as a dealer-manager, subject securities or related securities. Each Trust acknowledges that Rule 14e-5(b)(5) provides an exception to its prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) the purchase or arrangement is made in the ordinary course of business and not to

facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket (the “Basket Exception”).

As indicated by the Commission in the release replacing former Rule 10b-13 with Rule 14e-5,²⁵ transactions in baskets in accordance with the Basket Exception provide little opportunity for a covered person to facilitate an offer²⁶ or for a security holder to exact a premium from the offeror. Given that the purchases and redemptions of Creation Units of ETMFs in general involve baskets of securities, Authorized Participants acting as dealer-managers of tender offers for relevant securities may, in certain cases, be able to rely on the Basket Exception in purchasing Creation Units of Shares. From time to time, however, a change in the composition of the portfolio securities of the ETMF may result in a change in the basket that has been established for purposes of purchasing its Creation Units. As a consequence, the basket could contain less than 20 securities and/or covered securities and related securities could comprise more than 5% of the value of the basket. For example, a liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in the basket to fall below 20 and/or could cause covered securities and related securities to comprise more than 5% of the value of the basket. Additionally, as a result of fluctuations in the market value of the securities held in the basket, covered securities and related securities could, at times, comprise more than 5% of the value of

²⁵ See Exchange Act Release No. 42055 (Oct. 22, 1999) (the “1999 Release”).

²⁶ As discussed in the 1999 Release, “facilitation of an offer” includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking. In this regard, each Trust believes that it would be inefficient to facilitate a tender offer in a particular security by means of purchasing all of the securities in a Basket.

the basket. This composition would result in the unavailability of the Basket Exception for an Authorized Participant acting as a dealer-manager of a tender offer for the applicable securities and, in particular, may preclude an Authorized Participant from being able to rely on the Basket Exception.

In order to address situations (including but not limited to the foregoing examples) where the basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of the basket, each Trust respectfully requests that the Commission provide an exemption under Rule 14e-5 if an Authorized Participant acting as a dealer-manager of a tender offer purchases or arranges to purchase subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Shares, if such purchases are not effected for the purpose of facilitating such tender offer and are made in the ordinary course of business. Relief would be necessary in order to permit such Authorized Participants to effect purchases of subject and related securities under such circumstances given that the Basket Exception would not be available. This extension of the Basket Exception would accommodate a potential factual circumstance associated with the operation of ETMFs and would be consistent with the rationale underlying the adoption of the Basket Exception. Each Trust notes, in particular, that purchases would not be effected for the purpose of facilitating a tender offer.

Each Trust understands that, except as permitted by the relief from Rule 14e-5 requested herein, any Authorized Participant acting as a dealer-manager is required to comply with the requirements of Rule 14e-5.

Rules 15c1-5 and 15c1-6

Rule 15c1-5 requires a broker or dealer controlled by, controlling, or under common control with, the issuer of a security who induces the purchase or sale by a customer of a security, to disclose the existence of such control before entering into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary or secondary distribution of any security in which it effects any transaction in or for such customer's account or induces the purchase or sale of such security by such customer.

Each Trust believes that disclosure by a broker-dealer of a control relationship with the issuer of a portfolio security held by the ETMF, or of a participation in the distribution of one of the Portfolio Positions, would impose an unnecessary and unjustifiable burden on broker-dealers engaging in Share transactions for their customers. There is no realistic potential for manipulating one of the Portfolio Positions' market price by means of transactions in Shares. Such a strategy would be both expensive and inefficient. Application of the Rules 15c1-5 and Rule 15c1-6 could adversely affect the attractiveness of the Shares to broker-dealers and thereby affect market liquidity and the utility of the Shares. Each Trust, therefore, requests the SEC Staff to grant no-action relief from application of the rules with respect to creations and redemptions of Shares and secondary market transactions in Shares.

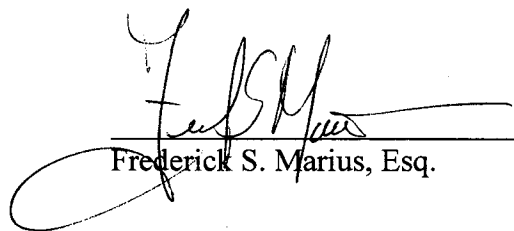
Conclusion

Based on the foregoing, we respectfully request that the Commission and the SEC Staff grant the requested relief. The forms of relief requested are similar to those actions that the Commission and the SEC Staff have taken in similar circumstances for ETFs. If the Commission or the SEC Staff believes that a different format is appropriate (for example, a no-

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action position rather than an exemption), we would appreciate the opportunity to revise this request for relief accordingly. Should you have any questions please call me at (617) 672-8566.

Sincerely,



Frederick S. Marius, Esq.

cc: Brad Gude, Securities and Exchange Commission