



DIVISION OF
CORPORATION FINANCE

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

February 6, 2018

**Response of the Office of Mergers and Acquisitions
Division of Corporation Finance**

Jack P. Drogin, Esq.
Schiff Hardin LLP
901 K Street NW
Suite 700
Washington, DC 20001

**RE: WisdomTree U.S. Quality Shareholder Yield Fund
Request for Exemptive Relief from Rule 14e-5**

Dear Mr. Drogin:

We are responding to your letter requesting exemptive relief dated January 22, 2018 and addressed to Ted Yu and Daniel F. Duchovny. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed copy of your correspondence. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your January 22, 2018 correspondence.

On the basis of the representations made and the facts presented in your January 22, 2018 letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting an exemption from Exchange Act Rule 14e-5.

This exemptive relief permits any Authorized Participant acting as a dealer-manager of a tender offer for a security in which a Fund invests to redeem Shares of the Funds in Creation Unit size aggregations for a Redemption Basket that may include a subject security or related security as defined under Exchange Act Rule 14e-5(c). The exemptive relief also operates to permit such persons, described in your letter as “covered persons” within the meaning of Exchange Act Rule 14e-5(c)(3)(ii), to engage in secondary market transactions with respect to a Fund’s Shares after the first public announcement of the tender offer 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 exemptive relief 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, under the circumstances described in your letter.

To the extent that either the Trust or the Fund constitutes a covered person within the meaning of Exchange Act Rule 14e-5(c)(3)(iv), each also may rely upon the exemptive

relief granted herein. In granting this exemptive relief, we note in particular that our grant of relief 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 a 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 Exchange Act Rule 14e-5.

The foregoing exemptive relief is based solely on the representations and the facts presented in your letter. The exemptive relief granted is strictly limited to the application of Exchange Act Rule 14e-5 to the transactions described in your letter. These transactions should be discontinued pending further consultations with the Commission staff if any of the facts or representations set forth in your letter change. In addition, this exemptive relief 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 Exchange Act Rules 10b-5 and 14e-3 thereunder. The transactions and covered persons within the scope of this exemptive relief 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
Division of Corporation Finance

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

February 6, 2018

In the Matter of Transactions in Shares of
WisdomTree U.S. Quality Shareholder Yield
Fund

**ORDER GRANTING EXEMPTION FROM
EXCHANGE ACT RULE 14E-5**

WisdomTree U.S. Quality Shareholder Yield Fund submitted a letter dated January 22, 2018 requesting that the Securities and Exchange Commission (“Commission”) grant an exemption from Exchange Act Rule 14e-5 for the transactions in Shares described in its letter (“Request”).

Based on the representations and the facts presented in the Request, and subject to the terms and conditions described in the letter from the Division of Corporation Finance dated January 22, 2018, it is ORDERED that the request for an exemption from Exchange Act Rule 14e-5 is hereby granted.

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

Brent J. Fields
Secretary

Action as set forth or recommended herein APPROVED
pursuant to authority delegated by the Commission under
Public Law 87-592.

For: Division of Corporation Finance

By: /s/Ted Yu

Date: February 6, 2018



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January 22, 2017

VIA ELECTRONIC MAIL

Mr. Ted Yu, Chief
Mr. Daniel Duchovny, Special Counsel
Office of Mergers and Acquisitions
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for Exemptive Relief from Rule 14e-5, promulgated under the Securities Exchange Act of 1934, for an Actively Managed Exchange-Traded Fund

Dear Mr. Yu and Mr. Duchovny:

We are writing on behalf of the WisdomTree Trust (the "Trust"), an open-end management investment company organized on December 15, 2005 as a Delaware statutory trust. This letter requests relief with respect to the WisdomTree U.S. Quality Shareholder Yield Fund ("QSY"), an actively-managed ETF (the "Fund"), whose shares ("Shares") are listed and traded on NYSE Arca, Inc. The Trust on behalf of itself, the Fund, and persons or entities engaging in transactions in Shares of the Fund, including Authorized Participants (as defined below), hereby requests exemptive relief from Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act").

On an ongoing basis, the Trust issues and redeems Shares in aggregations of 50,000 Shares (referred to as "Creation Units"). As described below, consistent with other ETFs, transactions in Creation Units for the Fund occur between the Trust and persons, referred to as "Authorized Participants," who create and redeem Shares in Creation Units pursuant to contractual arrangements pertaining to the Trust and the Fund. Additionally, as indicated below, Authorized Participants may engage in secondary market transactions in Shares.

Authorized Participants are typically broker-dealers and, as discussed below, may act as dealer-managers of tender offers. The Trust, on behalf of itself, the Fund and Authorized Participants 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 "Creation Basket" or a "Redemption Basket," as described

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and discussed below. Without such relief, in situations where an Authorized Participant is also a dealer-manager of a tender offer, and therefore a "covered person," as defined in Rule 14e-5(c)(3)(ii), subject to the Rule, the Rule's restrictions could impede the ability of the Fund to operate as intended and as disclosed in publicly filed documents, which could be detrimental to investors.¹

The Commission staff ("Staff") has previously issued relief substantially similar to that requested herein to both index-based ETFs² (providing class relief) and actively managed ETFs³ that are listed and traded on a national securities exchange and satisfy certain conditions ("Prior ETFs"). Similar to the Prior ETFs, the Fund's portfolio will be fully transparent and permit arbitrage activity. The relief requested by the Trust is substantially similar to the Rule 14e-5 relief granted to the Prior ETFs; therefore, the Trust does not believe that the relief requested raises any significant new regulatory issues.

¹ Consistent with the applicable precedent (see notes 2 and 3, *infra*), the Trust is the party that is requesting relief from the Commission. Although there is no guarantee of future results, the Trust believes that the "in-kind" purchase and redemption features of ETFs help facilitate the close correspondence between an ETF's net asset value ("NAV") and market price to the benefit of the ETF and its shareholders. The Trust and its series, the Fund, therefore have a strong interest in, and are beneficiaries of, the requested relief as it helps ensure that market participants are able to effect creations and redemptions, thereby permitting the Fund to operate as intended. The Trust further believes that the arbitrage activity described below is facilitated when more market participants are able to participate in the purchase and redemption of Creation Units. Additionally, the Trust is seeking relief on behalf of itself and the Fund in the event that the Trust and/or the Fund is deemed to be a "covered person" under Rule 14e-5(c)(3)(iv), as discussed in Part III below.

² See Letter from James A. Brigagliano to Stuart M. Strauss, Esq. regarding Class Relief for Exchange Traded Index Funds, dated October 24, 2006. Relief was granted for the Commission by the Division of Market Regulation (now the Division of Trading and Markets) pursuant to delegated authority.

³ See, e.g., Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Maureen A Gemma (November 15, 2017); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (August 23, 2017); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (April 11, 2017); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Vadim Avdeychik, Esq. (November 30, 2016); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Philip A. Shipp, Esq. (October 20, 2016); and Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (September 6, 2016).

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This letter is divided into four parts. Part I describes the Fund; Part II describes transactions in the Shares; Part III contains the legal analysis under Rule 14e-5; and Part IV sets forth the request for exemptive relief.

I. THE FUND

The Fund was organized on February 23, 2007, as the WisdomTree U.S. LargeCap Value Fund an index-based ETF (*i.e.*, EZY). The investment objective of the EZY was to seek to track the price and yield performance, before fees and expenses, of the WisdomTree U.S. LargeCap Value Index. Effective December 18, 2017, the Trust renamed the Fund the WisdomTree U.S. Quality Shareholder Yield Fund (*i.e.*, QSY), and began operating the Fund as an actively-managed ETF. The current investment strategy of the Fund is, using an actively-managed, model-based approach, to seek income and capital appreciation investing primarily in U.S. equity securities that provide a high total shareholder yield with favorable relative shareholder characteristics.⁴

A broker-dealer registered under the Exchange Act acts as the distributor and principal underwriter (the "Distributor") of the Creation Units of Shares of the Fund. The Trust has appointed entities to provide administrative, custodial, transfer agency, fund accounting and dividend disbursing functions for the Fund. The entity providing custodial services is hereafter the "Custodian" and the entity serving as transfer agent for the Fund is hereafter the "Transfer Agent."

II. TRANSACTION IN SHARES

The Fund issues and redeems⁵ Shares on a continuous basis at NAV only in Creation Units comprised of 50,000 Shares. Shares are listed on a U.S. national securities exchange as defined in

⁴ WisdomTree Asset Management, Inc., the investment adviser to the Fund, using a disciplined model-based process focused on long-term investing, seeks to identify approximately 200 companies with a high shareholder yield, comprising return of capital to shareholders through either dividend distributions or the repurchase of shares, while also displaying attractive attributes for traditional quality measures.

⁵ Redeemability of Creation Units is attributable to the fact that the Trust is an open-end management investment company. The term "open-end company" is defined in Section 5(a)(1) of the Investment Company Act of 1940, as amended (the "1940 Act"), as a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the 1940 Act defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Creation Units are redeemable at NAV. Shares, however, are not individually redeemable. The Trust, like other ETFs, may rely on exemptive relief obtained from the Commission permitting it, among other things, to register as an open-end management investment company

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Section 2(a)(26) of the 1940 Act (an "Exchange") and trade in the secondary market in the same manner as other equity securities. The trading market on an Exchange affords investors the opportunity to assume and liquidate positions in Shares at their discretion, permitting them to take advantage of prices at any time during the trading day. This combination of intra-day liquidity with the Creation Unit purchase and redemption features is generally expected to create potential arbitrage opportunities.⁶ In turn, as arbitrageurs (including Authorized Participants) purchase and redeem Creation Units in response to such opportunities, it is anticipated that they will enhance the liquidity of the secondary market, which may help mitigate pricing inefficiencies and reduce the likelihood that Shares will trade at a material premium or discount in relation to their NAV.

In contrast to a typical "mutual fund," the Fund does not sell or redeem individual Shares. Rather, like other ETFs, it sells and redeems its Shares in Creation Units.⁷ Transactions in Creation Units typically take place between the Trust and Authorized Participants, in the ordinary course of business. Authorized Participants include broker-dealers who have entered into contractual arrangements agreed to by the Distributor and the Transfer Agent setting forth the terms under which Authorized Participants can purchase and redeem Shares in Creation Unit sized aggregations ("AP Agreements"). Creation Units may be issued and redeemed in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments. The Custodian, through the National Securities Clearing Corporation, makes available prior to the opening of business on the applicable Exchange on each business day, the list of securities that Authorized Participants must deliver to purchase a Creation Unit ("Creation Basket") and the list of securities that they may receive if they redeem a Creation Unit ("Redemption Basket").

In accordance with the applicable AP Agreements, Authorized Participants create and redeem Creation Units under various scenarios. For example, in connection with creation transactions, an Authorized Participant might purchase the relevant securities in the Creation

notwithstanding that Shares are redeemable only in Creation Unit sizes. The relief addresses the possible question that arises as to whether the definitional requirements of a "redeemable security" or an "open-end company" under the 1940 Act have been met. See Investment Company Act Release No. 28471 (October 27, 2008) (the "1940 Act Exemptive Relief").

⁶ Arbitrageurs are expected to stand ready to take advantage of any slight premium or discount in the market price of Shares on the applicable Exchange versus the cost of depositing securities and creating a Creation Unit to be broken down into individual Shares.

⁷ Terms and provisions governing sales and redemptions of Shares by the Fund are set forth in the applicable prospectus and statement of additional information; the application for the 1940 Act Exemptive Relief; and the Trust's Declaration of Trust.

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Basket, transfer the securities to the Trust in exchange for the Creation Unit, and convey the Creation Unit to the investor. Conversely, in connection with redemption transactions, an Authorized Participant might receive a Creation Unit from an investor, convey the Creation Unit and receive the securities in the Redemption Basket from the Trust.

III. LEGAL ANALYSIS UNDER 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.⁸ 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, the Trust also is seeking relief in the event it or the Fund may be deemed to be a "covered person" by virtue of the AP Agreements pertaining to the Trust and the Fund.

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 Fund when it issues a Creation Unit or part of a group of securities that the Fund distributes when it redeems a Creation Unit (i.e., part of a Creation Basket or a Redemption Basket), the Trust respectfully requests that the Commission grant an exemption from Rule 14e-5 as it applies to such Authorized Participants. The exemption would 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)

⁸ Exchange Act Rel. No. 8712 (October 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."

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redeeming Shares of the Fund in Creation Unit size aggregations for a Redemption Basket that may include a subject security or a related security; and (2) engaging in secondary market transactions in Shares. With respect to redemptions, the Trust notes that the acquisition of individual securities held by the Fund 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 Redemption 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, the 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 AP Agreement, an Authorized Participant may seek to purchase in the secondary market securities comprising a Creation Basket that includes, with respect to a tender offer for which it acts as a dealer-manager, subject securities or related securities. The 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-5,⁹ transactions in baskets in accordance with the Basket Exception provide little opportunity for a covered person to facilitate an offer¹⁰ or for a security holder to exact a premium from the offeror. Given that the purchases and redemptions of Creation Units of ETFs in general typically 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

⁹ See Exchange Act Release No. 42055 (October 22, 1999) (the "1999 Release").

¹⁰ 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, the 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 Creation Basket.

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securities of the Fund 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 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, the 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 ETFs and would be consistent with the rationale underlying the adoption of the Basket Exception. The Trust notes, in particular, that purchases would not be effected for the purpose of facilitating a tender offer.¹¹

The 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.

IV. REQUEST FOR EXEMPTIVE RELIEVE

Based on the foregoing, the Trust, on behalf of itself, the Fund and Authorized Participants that act as dealer-managers of tender offers, respectfully requests that the Commission grant the

¹¹ See *supra* note 10.

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exemptive relief from Rule 14e-5 under the Exchange Act requested herein in connection with purchases of, and arrangements to purchase, subject securities and related securities outside of a tender offer. As more fully discussed above, the Trust is requesting that the Commission grant exemptions from Rule 14e-5 to permit any Authorized Participant acting as a dealer-manager of a tender offer, under the circumstances described herein, (1) to execute transactions that include, or are deemed to include, purchases of, or arrangements to purchase, subject securities or related securities in connection with (a) redeeming Shares of the Fund in Creation Unit size aggregations and (b) engaging in secondary market transactions in Shares and (2) to purchase or arrange to purchase subject securities and related securities in the secondary market for the purpose of transferring such securities to purchase Creation Units. As a related matter, the Trust is requesting that, in light of the relevance of the activities contemplated by the AP Agreements described above to the Trust and the Fund, the Trust and the Fund be permitted to rely on any exemptive relief that is granted. The Trust believes that granting the requested exemptions is consistent with precedent and will not result in the abuses that Rule 14e-5 was designed to address, and that it will facilitate the ability of Authorized Participants to engage in transactions in Creation Units, thereby permitting the Fund to operate as intended to the benefit of its shareholders.

Thank you for your consideration of this request. Should you have any questions or require additional information, please call the undersigned at (202) 778-6422.

Sincerely,



Jack P. Drogin