Dechert LLP

1095 Avenue of the Americas
New York, NY 10036-6797
+1 212 698 3500 Main
+1 212 698 3599 Fax
www.dechert.com

JEREMY SENDEROWICZ

jeremy.senderowicz@dechert.com
+1 212 641 5669 Direct
+1 212 698 3599 Fax

February 27, 2013

Ms. Josephine J. Tao
Office of Trading Practices and Processing
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Exemptive, Interpretive or No-Action Relief from Rule 10b-17 and Rules 101 and 102 of Regulation M promulgated under the Securities Exchange Act of 1934.

Dear Ms. Tao:

ALPS ETF Trust (the "Trust") is an open-end management investment company organized on September 13, 2007 as a Delaware business trust. The Trust is currently comprised of ten investment series.[1] This letter requests relief with respect to a prospective additional new series, the U.S. Equity High Volatility Put Write Index Fund (the "Fund").

The Trust on behalf of itself, the Fund, and any national securities exchange or national securities association on or through which the shares subsequently trade (with each such market being an "Exchange"), and persons or entities engaging in transactions in shares issued by the Fund ("Shares"), as the case may be, requests that the Securities and Exchange Commission (the "Commission" or the "SEC") grant exemptive, interpretive or no-action relief from Rule 10b-17 under the Securities Exchange Act of 1934 (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.

The Fund will issue and redeem Shares in aggregations of 100,000 (a "Creation Unit"). The Trust has filed a post-effective registration statement on Form N-1A with respect to the Fund and has applied to have the Fund's shares listed on an Exchange. The Trust is overseen by a board of trustees (the "Board") which will maintain the composition requirements of Section 10 of the Investment Company Act of 1940, as amended (the "1940 Act"). The Fund has adopted fundamental policies consistent with the 1940 Act and will be classified as "non-diversified" under the 1940 Act. The Fund 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").

The SEC Staff has previously issued relief similar to that requested herein to index based exchange-traded funds ("ETFs") listed and traded on a national securities exchange which meet certain conditions.[2] The Fund is an index-based ETF and thus could rely on such prior relief if it

---

1 The Trust has also filed amendments to its registration statement to offer certain additional series, but those series have not yet commenced operations.

2 See Letter from James A. Brigagliano regarding Class Relief for Fixed Income Exchange Traded Index Funds, dated April 9, 2007; (the "Fixed Income ETF Class Letter"); Letter from James A. Brigagliano to a PowerShares Exchange Traded Fund Trust regarding Class Relief for Exchange Traded Index Funds dated October 24, 2006 (the "Equity ETF Class Relief Letter"); Letter from Catherine McGuire, Esq., Chief Counsel Division of Market Regulation to the Securities Industry Association Derivative Products Committee, dated November 21, 2005 (the "SIA Letter"); Letter from James A. Brigagliano,

met the conditions precedent to such relief. However, the index to be followed by the Fund will be (as set forth in further detail below) an index consisting of exchange-traded option positions on 20 underlying stocks. Accordingly, the Fund will not meet certain of the conditions specified in such prior relief.[3] However, in all material respects, the Trust will operate in the same manner as previous index-based ETFs. Therefore, we do not believe that the Fund raises any significant new regulatory issues.

The Fund, Its Investment Objectives and Underlying Index

The Fund will be sub-advised by Rich Investment Solutions, LLC. ("Rich").

The Fund's investment objective is to seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of an index called the NYSE Arca U.S. Equity High Volatility Put Write Index (the "Index"). The Fund's investment objective is not fundamental and may be changed by the Board without shareholder approval. The Fund will normally invest at least 80% of its total assets in component securities that comprise the Index and in Treasury bills.

Assistant Director, Division of Market Regulation to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange LLC, dated August 17, 2001.

[3] Specifically, the Fund will not meet the conditions set forth in the Equity ETF Class Relief Letter for at least 70% of the ETF to be comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant ETF. The Fund will meet the requirement of the Equity ETF Class Relief Letter that no single component security will constitute more than 25% of the Fund's total value (provided that this requirement does not apply to Treasury securities held by the Fund (pursuant to the Fixed Income Class Relief Letter)).

The Index is an index that measures the return of a hypothetical portfolio consisting of exchange-traded put options which have been sold on each of 20 stocks and a cash position calculated as described below. The 20 stocks on which options are sold are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the NYSE Arca, Inc. (the "Index Provider").

Each listed put option included in the Index is an "American-style" option (i.e., an option which can be exercised at the strike price at any time prior to its expiration) with a 60-day term. The strike price (i.e., the price at which a put option can be exercised) of each put option included in the Index must be as close as possible to 85% of the closing price of the option's underlying stock price as of the beginning of each 60-day period. The listed put options included in the Index can be exercised at any time during prior to their expiration, but the Index will reflect the value of each such option throughout the 60-day period as if the option is not exercised until its expiration. Each such option will automatically be deemed exercised on its expiration date if its underlying stock price is below its strike price. If the stock underlying the put option closes below the option's strike price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock is deemed to be made and the Index value is correspondingly reduced. If the underlying stock does not close below its strike price, then the option expires worthless and the entire amount of the premium payment is retained within the Index.

For example, suppose a stock "ABC" trades at $50 per share at the start of the 60 day period, and a listed put option with a term of 60 days was sold with a strike price of $42.50 per share for a premium of $2 per share:

<u>Settlement at or above the strike price</u>: If at the end of 60 days the ABC stock closed at or above the strike price of $42.50, then the option would expire worthless and the Index's value would reflect the retention of the $2 per share premium. The Index's value thus would be increased by $2 per share on the ABC option position.

<u>Settlement below the strike price</u>: If at the end of 60 days, ABC closed at $35, then the option would automatically be deemed exercised on its expiration date. The Index's value would change as if the Index had been put (i.e., would buy) ABC at the strike price of $42.50 and sell ABC immediately at the closing price of $35. As a result, the Index's value would be reduced by $7.50 per share. However, the Index's value would also reflect the retention of the $2 per share premium, so the net loss to the Index's value would be $5.50 per share on the ABC option position.

For further elaboration, set forth below is a table outlining various hypothetical scenarios concerning changes in the stock price of ABC and the effect of such changes on a listed put option included in the Index:

Stock "ABC" at Inception	Strike Price of Put Written on "ABC"	"ABC" Price at end of 60 day Period	Percentage Change in "ABC" Price for the period	Premium Received for Written Put	Gain or loss at Settlement from exercise or expiration of Put	Gain or Loss on Option Position (Premium plus or minus Settlement amount)	Gain or Loss on Option Position as a percentage of initial Stock Price
$50.00	$42.50	$75.00	50%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$70.00	40%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$65.00	30%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$60.00	20%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$55.00	10%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$50.00	0%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$45.00	-10%	$2.00	$0.00	$2.00	4%
$50.00	$42.50	$40.00	-20%	$2.00	-$2.50	-$0.50	-1%
$50.00	$42.50	$35.00	-30%	$2.00	-$7.50	-$5.50	-11%
$50.00	$42.50	$30.00	-40%	$2.00	-$12.50	-$10.50	-21%
$50.00	$42.50	$25.00	-50%	$2.00	-$17.50	-$15.50	-31%

The Index's value is equal to the value of the options positions comprising the Index plus a cash position. The cash position starts at a base of 1000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month Treasury-bill rate. The cash position is decreased by cash settlement on options which finish in-the-money (i.e., where the closing price of the underlying stock at the end of the 60-day period is below the strike price). The cash position is also decreased by a deemed cash distribution paid following each 60-day period, currently targeted at the rate of 1.5% of the value of the Index. However, if the option premiums generated during the period are less than 1.5%, the deemed distribution will be reduced by the amount of the shortfall.

The Fund will seek to track the performance of the Index by selling listed 60-day put options in proportion to their weightings in the Index. By selling an option, the Fund will receive premiums from the buyer of the option, which will increase the Fund's return if the option is not exercised and thus expires worthless. However, if the option's underlying stock declines below the strike price, the option will finish in-the-money and the Fund will be required to buy the underlying stock at the strike price, effectively paying the buyer the difference between the strike price and the closing price. Therefore, by selling a put option, the Fund is exposed to the amount by which the price of the underlying stock is less than the strike price. Accordingly, the potential return to the Fund is limited to the amount of option premiums it receives, while the Fund can potentially lose up to the entire strike price of each option it sells. Further, if the value of the stocks underlying the options sold by the Fund increases, the Fund's returns will not increase accordingly.

Every 60 days, the options included within the Index are exercised or expire and new option positions are established, and the Fund will enter into new option positions accordingly and sell any underlying stocks it owns as a result of the Fund's prior option positions having been exercised. This 60-day cycle likely will cause the Fund to have frequent and substantial portfolio turnover. If the Fund receives additional inflows (and issues more Shares accordingly in Creation Units) during a 60-day period, the Fund will sell additional listed put options which will be exercised or expire at the end of such 60-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 60-day period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

Availability of Information

On each Business Day, before commencement of trading in Shares on the Exchange, the Fund will disclose on its website the identities and quantities of options sold by the Fund, as well as the Treasury bills and any other cash instruments, held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. The website and information will be publicly available at no charge. See also "Calculation of Intra Day NAV" herein.

Sales of Fund Shares

ALPS Distributors, Inc., a registered broker dealer under the Exchange Act and member of the Financial Industry Regulatory Authority, (the "Distributor") acts on an agency basis and is the Fund's "principal underwriter" as defined in Section 2(a)(29) of the 1940. The Fund will sell Shares to investors only in Creation Units through the Distributor on a continuous basis at the NAV per share next determined after an order in proper form is received. The Fund currently expects to effect sales of Shares in Creation Units only for cash, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (the "Deposit Cash"). The Fund will issue and sell Shares on any Business Day. The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange, Inc. ("NYSE") (ordinarily 4:00 p.m., Eastern time) on each Business Day.

In order to defray the transaction expenses, including brokerage costs, that will be incurred by the Fund when investors purchase or redeem Creation Units, the Fund will impose purchase or redemption transaction fees ("Transaction Fees") to be borne only by such purchasers or redeemers. The exact amounts of such Transaction Fees will be $500 for the Fund. The Transaction Fee is designed to cover the custodial and other costs incurred by the Fund in effecting trades. The Fund's Transaction Fees will be fully disclosed in the Fund's prospectus ("Prospectus") and the method of calculating these Transaction Fees will be fully disclosed in the statement of additional information ("SAI") of such Fund. Transaction Fees will be limited to amounts that have been determined by the Adviser to be appropriate. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

Creation Units will be aggregations of 100,000 Shares. The Applicants recognize that each Share is issued by an investment company and, accordingly, the acquisition of any Shares by an investment company, whether acquired from the Fund or in the secondary market, shall be subject to the restrictions of Section 12(d)(1) of the 1940 Act except as permitted by an exemptive order that permits investment companies to invest in the Fund beyond those limitations.

Creation Units may be purchased through orders placed by the Distributor through an "Authorized Participant" which is either (1) a "Participating Party," i.e., a broker-dealer or other participant in the Shares Clearing Process through the Continuous Net Settlement System of the NSCC, a clearing agency that is registered with the Commission, or (2) a DTC Participant, which in either case has executed an agreement with the Trust, the Distributor and the Transfer Agent, with respect to creations and redemptions of Creation Units ("Participant Agreement"). An investor does not have to be an Authorized Participant, but must place an order through, and make appropriate arrangements with, an Authorized Participant. The Distributor will be responsible for transmitting orders to the Fund. Authorized Participants must follow the creation procedures specified in the section below entitled "Settlement and Clearing."

All standard orders to create a Creation Unit must be received by the Distributor no later than the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern time) (the "Closing Time") on the date such order is placed, as described in the Participant Agreement, in order for creation of Creation Units to be effected based on the NAV of Shares, as next determined on such date. The Distributor may reject any order to purchase Shares that is not submitted in proper form. In addition, the Fund may reject a purchase order transmitted to it by the Distributor if (1) the purchaser or group of purchasers, upon obtaining the Shares ordered, would own 80% or more of the outstanding Shares of the Fund; (2) the required Deposit Cash is not delivered; (3) the acceptance of the Deposit Cash would have certain adverse tax consequences, such as causing the Fund to no longer meet the requirements of a RIC under the Code; (4) the acceptance of the Deposit Cash would, in the opinion of the Trust, be unlawful, as in the case of a purchaser who was banned from trading in securities; (5) the acceptance of the Deposit Cash would otherwise, in the discretion of the Trust or the Distributor, have an adverse effect on the Trust or the rights of beneficial owners; or (6) there exist circumstances outside the control of the Fund that make it impossible to process purchases of Shares for all practical purposes. Examples of such circumstances include: acts of God or public service or utility problems such as fires, floods, extreme weather conditions and power outages resulting in telephone, telecopy and computer failures; market conditions or activities causing trading halts; systems failures involving computer or other information systems affecting the Fund, the Adviser, the Distributor, the Custodian, NSCC or any other participant in the purchase process, and similar extraordinary events.

The Distributor will issue or cause the issuance of confirmations of acceptance, and will be responsible for delivering a Prospectus to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

See the section below entitled "Settlement and Clearing" for the creation procedures applicable to the Fund.

Distributor

The Distributor will not distribute Shares in less than Creation Units, and it will not maintain a secondary market in the Shares. The Distributor may enter into selected dealer agreements with other broker-dealers or other qualified financial institutions for the sale of Creation Units of Shares ("Soliciting Dealers"). Such Soliciting Dealers may also be a participant in DTC. The Fund has adopted a 12b-1 plan, but the Board has not approved any payments under the plan and no payments are currently expected to be made under the plan.

Redemption of Shares

Beneficial owners of Shares must accumulate enough Shares to constitute a Creation Unit in order to redeem through the Fund. Creation Units will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund. The Fund currently expects to effect redemptions of Shares in Creation Units only for cash. The Trust will redeem Shares of the Fund on any Business Day. Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 under the Act, the right to redeem will not be suspended, nor payment upon redemption delayed, except as provided by Section 22(e) of the 1940 Act. Redemption requests must be received by 4:00 p.m., Eastern Time to be redeemed that day. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.

Settlement and Clearing. The Deposit Cash will settle via free delivery through the Federal Reserve System. The Shares will settle through DTC. The Custodian will instruct the movement of the Shares only upon validation that the Deposit Cash has settled correctly.

DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC participants. Shares will be registered in book-entry form only, which records will be kept by DTC.

Shares of the Fund will clear and settle through DTC and cash will clear and settle through the Federal Reserve System. The Fund will issue Creation Units of Shares and the Custodian will deliver the Shares to the Authorized Participants through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Fund has received a redemption request in proper form and the Authorized Participant transfers Creation Units to the

Custodian through DTC, the Fund will cause the Custodian to initiate procedures to transfer the requisite amount of cash (the "Redemption Cash"). On T + 3, assuming the Custodian has verified receipt of the Creation Units, the Custodian will transfer the Redemption Cash through the Federal Reserve System.

Shares of the Fund will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants.

Depository Trust Corporation

DTC serves as securities depository for the Shares. (The Shares may be held only in book-entry form; stock certificates will not be issued.) DTC, or its nominee, is the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or its participants (i.e., securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations), some of whom (and/or their representatives) own DTC. Beneficial owners of Shares are not entitled to have Shares registered in their names, and will not receive or be entitled to receive physical delivery of certificates.

Accordingly, to exercise any rights of a holder of Shares, each beneficial owner must rely on the procedures of (i) DTC; (ii) DTC Participants; and (iii) brokers, dealers, banks and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly, through which such beneficial owner holds its interests.

Calculation of Intra Day NAV

The NSCC's system for the receipt and dissemination to its participants of the portfolio composition file ("PCF") was designed for portfolios consisting entirely of equity securities (or debt securities) and cash and money market instruments. As a result, it is not currently capable of processing information with respect to the option positions expected to be sold by the Fund, although Applicants expect that it may become so in the future. Therefore, the Fund Sub-Adviser has developed what it calls an "IIV File," which it will use to disclose the option positions sold by the Fund until such time (or perhaps longer, if the Trust deems it advisable) as the NSCC's PCF system can process such information regarding such instruments. The Trust, or the Adviser, Fund Sub-Adviser or Index Provider on the Trust's behalf, will post the IIV File to a website before the opening of business on each Business Day, and the public (including all Authorized Participants) will have access to the website containing the IIV File.[4] The IIV File will contain information sufficient by itself or in connection with the PCF for market participants to calculate the Fund's IIV and effectively arbitrage the Fund. The Fund currently expects that the following information would be provided in the IIV File: (A) the CUSIP number and exchange ticker symbol for each option sold by the Fund; (B) the close or most recent price for each such option; (C) the number of listed short option contracts sold by the Fund; (D) the Fund's total assets and the total shares

4 Authorized Participants that are not also NSCC members may have to either join NSCC or pay a third-party data vendor to obtain PCF information made available through the facilities of NSCC. Applicants understand that the NYSE Arca receives PCF files from NSCC and expect other Stock Exchanges would as well.

outstanding; and (E) a "net other assets" figure reflecting expenses and income of the Fund to be accrued during and through the following Business Day and accumulated gains or losses on the Fund's short option positions through the end of the Business Day immediately preceding the publication of the IIV File.

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for the Fund during such next Business Day. The IIV File will also be the basis for the next Business Day's NAV calculation. Under normal circumstances, there will be no Deposit List or Redemption List for the Fund, which will be created and redeemed entirely for cash. The IIV File published before the open of business on a Business Day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit, and the amount of cash that will be paid upon redemption of a Creation Unit, for the Fund for that Business Day.

The Exchange (or another market information provider) will disseminate the IIV (represented as a per share value) every 15 seconds throughout the trading day for the Fund through the facilities of the Consolidated Tape Association. The IIV for the Fund at the beginning of each Business Day will be the NAV calculated as of the close of the previous Business Day, and will adjust throughout the day to account for marked-to-market gains or losses in the Fund's short option positions (utilizing the information also contained in the IIV File set forth above). In addition, the Exchange (or another market information provider) will disseminate the intra-day value of the Index every 15 seconds throughout the trading day for the Fund through the facilities of the Consolidated Tape Organization.

The Trading Market; Arbitrage Opportunities

The Shares will be listed and traded on the Exchange. Shares will be freely tradable on the Exchange throughout the trading session. The price of Shares trading on the Exchange will be based on a current bid/offer market. The trading market on the 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 creates potential arbitrage opportunities that, in turn, should mitigate pricing inefficiencies. Historically, this process has been proven to establish efficient pricing with other ETFs.

The Trust believes that the Fund will provide arbitrage opportunities that will enable market participants to mitigate pricing inefficiencies in a manner comparable to other ETFs. In order to properly hedge a position held in the Fund, market participants will need to know each option contract sold by the Fund and buy or sell those options[5] (depending on whether the investor is holding a long or short position in the Fund). As set forth above under "Calculation of Intra Day NAV," the IIV File to be disseminated to market participants will include, among other items, the applicable information regarding: (i) the identities and amounts of each listed option

[5] An investor could also hedge its position in the Fund by utilizing swaps, options or other derivative positions in respect of the equivalent shares of the underlying stocks.

contract sold by the Fund; and (ii) the value of each of the Fund's listed short option positions. This information will enable market participants to hedge their positions in the Fund and mitigate pricing inefficiencies.[6]

Because each option included in the Index and sold by the Fund is publicly listed and traded, the Trust believes that the information available to the marketplace will provide arbitrage opportunities between the then-current market prices of the Shares relative to the listed components which make up the values of the option positions included in the Index and sold by the Fund. The Trust further believes that these opportunities would be reflected in the information disseminated every 15 seconds during the trading day, and that market participants will be able to act on such arbitrage opportunities by buying or selling the Shares versus buying or selling the listed components which make up the values of the option positions included in the Index and sold by the Fund. The Trust believes these arbitrage opportunities will also achieve the effect of reducing premiums or discounts between the market price and NAV of the Shares.

The high degree of historical and expected correlation of NAV and share prices contrasts with the case of shares of closed-end equity funds which, not having the ability to create and redeem at the fund level, typically trade at a material discount (and occasionally at a premium) to their underlying net asset values. For the reasons set forth above, the Trust does not believe that

---

6 The Trust expects that market participants engaging in arbitrage transactions will typically (as is the case with other ETFs) also calculate the information in items (i-iii) (as well as other information provided in the IIV File) on their own and compare them to the information provided in the IIV File, thus providing a further layer of transparency to the information provided in the IIV File and helping to facilitate hedging and mitigate pricing inefficiencies.

the trading of the Fund's Shares will affect the spread between the NAV and market price of the Shares to any greater extent than is the case for typical ETFs.

We believe that the Fund will not present any new issues with respect to the exemptions which allow for current index-based ETFs to redeem their shares only in Creation Units. On each Business Day before commencement of trading in shares on the Exchange, the Fund will disclose on its website the identities and quantities of its portfolio holdings, including the nature of its option positions ("Portfolio Securities"), and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. The website and information will be publicly available at no charge. Under accounting procedures followed by the Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T + 1"). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the Portfolio Securities and other assets that will form the basis for the NAV calculation at the end of the Business Day. Since market participants will be aware at all times of the Fund's Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's NAV calculation, the risk of significant deviation between NAV and market price is similar to that which exists in the case of other index-based ETFs.

The Trust represents that the Fund's arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the IIV, the ability to access the options sold by the Fund, as well as arbitrageurs' ability to create workable hedges. As discussed above, there will be disclosure on each business day of the option contracts sold by the Fund and the IIV will be disseminated every 15 seconds throughout the trading session each business day. For the reasons described above, the options sold by the Fund will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges. Moreover, the Fund will invest solely in liquid securities. For these reasons, we expect arbitrageurs to be able to take advantage of price variations between the Fund's market price and NAV. Thus, the Trust expects a close alignment between the market price of Fund shares and the NAV of the Fund.

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. We note that 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 while broker-dealers that tender Deposit Cash to the Trust through the Distributor in return for Creation Unit(s) of Shares generally will not be part of a syndicate or selling group, and no broker-dealer will receive fees, commissions or other remuneration from the

Trust or the Distributor for the sale of Creation Units, under certain circumstances they could be deemed to be an "underwriter" or "distribution participant" as those terms are defined in Rule 100(b).

The Trust respectfully requests that the Commission or 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, inter alia, redeemable securities issued by an open-end management investment company (as such terms are used in the 1940 Act). The Trust is registered as an open-end management investment company under the 1940 Act. However, the individual Shares are not redeemable except in Creation Unit size aggregations. Due to the redeemability of the Shares in Creation Unit size aggregations, there should be little disparity between the Shares' market price and their NAV per Share. 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 100,000 Shares (i.e., a Creation Unit) the 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 company securities are exempted under paragraph (c)(4). Without such an exemption, they could not operate as intended. In view of the foregoing, the Trust requests that the 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 Size 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.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Creation Unit size aggregations of Shares may be created, and Shares in Creation Unit size aggregations may be redeemed for cash at NAV, on any Business Day. Holders of Shares also have the benefit of intra-day secondary market liquidity by virtue of the Exchange listing. Thus, the secondary market price of Shares should not vary substantially from the NAV of Shares of the relevant Fund. Because of the redeemability of Shares in Creation Unit size aggregations, coupled with the open-ended nature of the Fund, any significant disparity between the market price of the Shares and NAV should be eliminated by arbitrage activity. Because their NAV is largely determined based on the market value of the Portfolio Securities, neither the creation nor redemption of Shares, nor purchases or sales of Shares in the secondary market, will impact the NAV, and such transactions should not have a significant impact on the market value of Shares.

In view of the lack of any special financial incentive to create Creation Units, combined with a predictable lack of any meaningful potential for the issuance and the secondary market trading of the Shares to affect significantly Share pricing, application of Rule 101 to a broker-dealer or other person who may be participating in a distribution or broker-dealers or other persons in their creation and redemption activities, in their day-to-day ordinary business of buying and selling securities and the Shares, may undermine the potential beneficial market effect of Share trading.

Rule 102 of Regulation M

The 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 our 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, the 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 the Fund's portfolio during a distribution of such security. The Trust will redeem the Creation Unit size aggregations of Shares at the NAV of the Shares. Although the Shares will be traded on the secondary market, the Shares may only be redeemed in Creation Unit size aggregations. Thus, the Trust believes that the redemption by the Trust of the Shares at NAV for cash does not involve the abuses that Rule 102 was intended to prevent.

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). 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.[7] Except for the fact that redemption is subject to the minimum condition of tendering 100,000 Shares, the Trust is intended to function like any other open-end fund continuously offering its shares.[8] In addition, compliance with Rule 10b-17 would be impractical in light of the nature of the Fund. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. It is in recognition of the foregoing, that the Division of Investment Management issued an order permitting the Trust to issue shares with limited redeemability while still treating the Trust like any other investment company.

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

---

7 See *supra* note 2.

8 See *supra* note 2.

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.[9]

The Fund represents that it will comply with the other requirements of Rule 10b-17. The Fund 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 such information on such date) with respect to any distribution made by the Fund, the Fund 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")[10], 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

---

9 As an investment company, the Fund is required by the Code to distribute at least 98% of its ordinary income and capital gains during the calendar year. If the Fund declares too small a dividend, it will be charged an excise tax. If it declares too large a dividend, the excess could be considered a return of capital to investors. To avoid an over- or under-distribution of ordinary income, registered investment companies, including the Fund, must estimate: (i) the amount of ordinary income to be earned during the period from the date the dividend is declared to December 31; and (ii) the number of shares that will be outstanding as of the record date. Requiring the Fund to declare the amount of a dividend ten days in advance of the record date would increase the period for estimating ordinary income and the number of outstanding shares, and thus increase the risk of an over- or under-distribution. Requiring the Fund to declare the amount of a dividend ten days in advance of the record date also would increase the chance that the Fund would over- or under-distribute capital gains. Further, unlike ordinary income, the Fund does not have the problem of estimating the aggregate amount of capital gains it will earn between declaration date and year-end, but as noted above, requiring the Fund to declare the amount of a dividend ten days in advance of the record date would increase the chance that the Fund would mis-estimate the number of outstanding shares. This, in turn, would increase the chance that the Fund would mis-estimate the per share amount of capital gains it must distribute.

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

> 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 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.

We respectfully submit that none of these concerns raised by the Commission in the Proposing Release[11] will be implicated if the requested relief is granted. As set forth above, the Fund 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 Fund 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

[11] 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").

open-end investment companies with fully redeemable shares, thus should be applicable to the Fund with respect to the timing requirements of Rule 10b-17(b)(1)(v)(a-b).[12]

Conclusion

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. The forms of relief requested are similar to those actions that the Commission and the Staff have taken in similar circumstances. If the Commission or the Staff believes that a different format is not appropriate (for example, a no-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 (212) 641-5669.

Sincerely,

Jeremy Senderowicz

cc: Brad Gude
Darren Vieira

12 The relief being requested is analytically consistent with the Division of Market Regulation Staff Legal Bulletin No. 9, as revised on September 10, 2010, which stated that, subject to certain conditions, actively managed exchange traded funds ("Active ETFs"), could rely on the exceptions in Rules 101(c)(4) and 102(d)(4) of Regulation M under the Exchange Act which are only available to open-end investment companies, notwithstanding the fact that shares of Active ETFs are redeemable only in Creation Units.