

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77173; File No. TP 15-15)

February 18, 2016

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

By letter dated February 18, 2016 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for WisdomTree Trust (the “Trust”) on behalf of the Trust, WisdomTree Put Write Strategy Fund (the “Fund”), any national securities exchange on or through which shares issued by the Fund (“Shares”) may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of 50,000 shares (“Creation Units”).

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Fund seeks to track the performance of an underlying index, the CBOE S&P 500 Put Write Index (“Index”). The Index is based on a passive investment strategy which consists of overlapping hypothetical investments in a single series of exchange-listed S&P 500 Index options (“SPX Puts”) over a money market account hypothetically invested in one and three-month Treasury bills. Specifically, the Index hypothetically writes at-the-money SPX Puts on a monthly basis, usually on the third Friday of the month (i.e., the “Roll Date”), which match the expiration date of the hypothetical SPX Puts. All SPX Puts hypothetically invested in by the Index are standardized options traded on the Chicago Board Options Exchange. At each Roll Date, any settlement loss in the Index based on the expiring SPX Puts is financed by the Treasury bill account and a new

batch of hypothetical at-the-money SPX Puts is sold. Revenue from their sale is added to the Index's hypothetical Treasury bill account. On each Roll Date in March, June, September, and December ("March quarterly cycle months"), the proceeds from the hypothetical sales of the SPX Puts are invested in hypothetical three-month Treasury bills. On each Roll Date in a March quarterly cycle month, the three month Treasury bills hypothetically purchased in the prior March quarterly cycle month, and any one-month Treasury bills hypothetically purchased in the prior month are deemed to mature, and the proceeds are hypothetically invested in new three-month Treasury bills at the three-month Treasury bill rate. In other months, the revenue from the hypothetical sale of SPX Puts is hypothetically invested separately at the one-month Treasury bill rate, and where applicable, any one-month Treasury bills purchased in the prior month are deemed to mature and hypothetically invested in new one-month Treasury bills at the one-month Treasury bill rate. As stated above, all investments used to determine Index value are hypothetical.

In order to track the Index, under normal circumstances, as described in the Letter, the Fund will invest not less than 80% of its assets in SPX Puts and one and three month U.S. Treasury bills. The Fund may invest up to 20% of its net assets (in the aggregate) in other investments, as described in the Letter, that are not included in the Index, but which WisdomTree Asset Management, Inc. ("Adviser") or Mellon Capital Management ("Sub-Adviser") believes will help the Fund to track the Index and that will be disclosed at the end of each trading day ("Other Assets").<sup>1</sup> The Fund's investment strategy will be designed to write a sequence of one-month, at-the-money, SPX Puts and invest cash and Other Assets targeted to achieve one- and

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<sup>1</sup> For example, the Requestors represent that there may be instances in which the Adviser or Sub-Adviser may choose to purchase or sell financial instruments not in the Index which the Adviser or Sub-Adviser believes are appropriate to substitute for one or more Index components in seeking to replicate, before fees and expenses, the performance of the Index.

three-month Treasury bill rates. The number of SPX Puts written will vary from month to month, but will be limited to permit the amount held in the Fund's investment in Treasury bills to finance the maximum possible loss from final settlement of the SPX Puts.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- Creation Units will be continuously redeemable at the net asset value ("NAV") next determined after receipt of a request for redemptions by the Fund and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on an Exchange;
- The Fund seeks to replicate the performance of the Index, all the components of which have publicly available last sale trade information;
- The intra-day indicative value of the Fund per share and the intra-day value of the Index will be publicly disseminated every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association;
- 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 the Fund's options positions as well as Other Assets held by the Fund that will form the basis for the calculation of the Fund's NAV at the end of the business day;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the cash to be deposited as consideration for the purchase of Creation Units;

- The arbitrage mechanism will be facilitated by the transparency of the Fund’s portfolio and the availability of the intra-day indicative value, the liquidity of securities and Other Assets held by the Fund, the ability to access the options sold by the Fund, as well as arbitrageurs’ ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The options sold by the Fund will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors expect arbitrageurs to be able to take advantage of price variations between the Fund’s market price and its NAV; and
- A close alignment between the market price of Shares and the Fund’s NAV is expected.

### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.<sup>2</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is

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<sup>2</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>3</sup>

#### Rule 102 of Regulation M

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<sup>3</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the Fund, and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>4</sup>

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<sup>4</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a

## Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the

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particular record date.

Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation



provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Robert W. Errett  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(6) and (9).