

May 6, 2016

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

**Re: Request of IndexIQ ETF Trust, et al., for Exemptive, Interpretive or No-Action Relief from Rule 10b-17 under the Securities Exchange Act of 1934, as amended and Rules 101 and 102 of Regulation M thereunder**

Dear Ms. Tao:

SUMMARY OF REQUEST FOR RELIEF AND PRIOR RELIEF

I am writing on behalf of IndexIQ ETF Trust ("Trust"). The Trust is an open-end series investment management company and is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940 ("1940 Act"<sup>1</sup>). The Trust listed the individual shares (collectively, "Initial Shares") of its initial five funds on NYSE Arca ("Arca") on March 17, 2009 (collectively, "Initial Funds"). The Trust is currently comprised of 17 investment portfolios (each, a "Fund" and collectively, "Funds"). The Trust intends to issue additional funds ("Additional Funds") in the future and presently intends to issue four initial Additional Funds : the "IQ Enhanced Core Bond U.S. ETF", "IQ Enhanced Core Plus Bond U.S. ETF", "IQ Leaders Bond Allocation Tracker ETF" and the "IQ Leaders GTAA Tracker ETF" ("Initial Additional Funds") as briefly described below. The principal listing exchange for the Initial Additional Funds will be Arca<sup>2</sup> and the individual shares issued by such funds (collectively, "Initial Additional Shares") will be traded there, and additionally may be traded on other secondary markets ("Exchanges"<sup>3</sup>).

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<sup>1</sup> The Trust requested and received exemptions from the application of certain sections of the 1940 Act and the rules promulgated thereunder to operate as an "exchange-traded fund" ("ETF") (*see*, the order on March 20, 2009 from the Commission granting such relief: Investment Company Act Release No. 28653; 812-13441) ("Order").

<sup>2</sup> NYSE Arca ("Arca") received approval from the Commission pursuant to Section 19(b) of the 1934 Act of rules applicable to the trading of the Initial Shares of the Initial Funds. The Trust has selected Arca as the exchange on which it intends to list Shares of the Initial Additional Funds. No further filings need be made with the Commission under Section 19(b) of the 1934 Act in order to list the Initial Additional Funds and their Initial Additional Shares under the same rules.

<sup>3</sup> In the future, the Trust may determine to list Initial Additional Shares on an exchange other than Arca (such other exchanges, together with Arca, are referred to herein collectively as "Exchange"). If the Initial Additional Shares also trade on an Exchange pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the 1934 Act.

On March 25, 2009, the Trust and its Initial Funds were granted relief by the Commission<sup>4</sup> with respect to the application of Section 11(d)(1) of the Exchange Act of 1934 ("1934 Act"), Rules 10b-10, 10b-17, 11d1-2, 15c1-5 and 15c1-6 under the 1934 Act and Rules 101 and 102 of Regulation M thereunder in connection with the secondary market transactions in the Initial Shares on Arca or any other Exchange and the creation and redemption of Creation Units of the Funds ("Prior Relief"). The relief requested in this letter is identical to that granted in the Prior Relief, however the Initial Additional Funds cannot rely upon the Prior Relief because it was expressly granted only to the Initial Funds. Therefore, the Trust, on behalf of itself and its Initial Additional Funds, Arca or any Exchange on which the Initial Additional Shares may additionally trade, the Trust's Distributor and persons engaging in transactions in Initial Additional Shares including authorized participants ("Authorized Participants", and collectively, "Applicants"), hereby request that the Commission grant exemptive, interpretive or no-action advice regarding Rule 10b-17 of the 1934 Act and Rules 101 and 102 of Regulation M thereunder in connection with the operation of the Initial Additional Funds and secondary market transactions in their individual Initial Additional Shares (together, "Relief"), as discussed below.

Applicants are aware of the requests made by, or on behalf of, various other ETFs and the response letters of the Commission's Division of Trading and Markets, formerly the Division of Market Regulation ("Division") granting the same relief to (i) the open-end management investment companies and unit investment trusts (registered as such with the Commission) that have been listed and traded on an Exchange as ETFs<sup>5</sup>, (ii) certain exchange traded financial

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<sup>4</sup> See, letter from Josephine J. Tao, Esq. Assistant Director, Division of Trading and Markets to Kathleen H. Moriarty, Esq., Katten Muchin Rosenman, LLP dated March 25, 2009 (revised April 2, 2009) ("Prior Relief Letter") and the relief requested by the Trust and the Initial Funds in the letter to Josephine J. Tao, Esq from Kathleen H. Moriarty dated March 25, 2009 ("Prior Request Letter").

<sup>5</sup> See, for example, the relief requested by WisdomTree Trust and its funds ("WisdomTree ETFs") and granted in the Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation ("Division of Market Regulation"), to Richard F. Morris, Esq. dated May 9, 2008 with respect to certain WisdomTree Funds, letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Richard F. Morris, Esq. dated October 12, 2006 with respect to certain additional WisdomTree Funds and in the letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP dated June 15, 2006 with respect to certain existing as well as future WisdomTree Funds (collectively, "WisdomTree Letters"); see also, iShares MSCI EAFE Growth Index Fund and iShares MSCI EAFE Value Index Fund, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Jack P. Drogin of Morgan Lewis & Bockius, LLP, dated August 4, 2005; iShares FTSE/Xinhua China 25 Index Fund, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Jack P. Drogin, Morgan, Lewis & Bockius LLP, dated October 14, 2004; Fresco Index Shares Fund, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Mayer, Brown Rowe & Maw, dated October 21, 2002; iShares Trust, letters from James A. Brigagliano, Assistant Director, Division of Market Regulation to W. John McGuire, Morgan, Lewis & Bockius LLP, dated July 25, 2002, to Mary Joan Hoene, Carter, Ledyard & Milburn LLP, dated December 1, 2000, and September 5, 2000, and to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated May 16, 2000 (collectively, "iShares Letters"); see also, Vanguard Index Funds et al., letter from James A. Brigagliano, Associate Director of the Division of Market Regulation to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated May 21, 2001; Vanguard World Index Funds, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Barry A. Mendelson, The Vanguard Group, dated October 20, 2004; and Vanguard International Equity Index Funds letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated March 9, 2005 (collectively, "Vanguard Letters"); see also the relief requested by ProShares Trust and granted in the letter from James A. Brigagliano, Associate

products that are not registered investment companies ("ETVs")<sup>6</sup>, as well as (iii) the Division's response letters issued in connection with certain ETF "Class Relief"<sup>7</sup> and the "Class Relief" for

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Director, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated January 24, 2007 with respect to certain existing as well as future ProShares Funds, amending the earlier letter from Brian B. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Kathleen H. Moriarty, Carter Ledyard & Milburn LLP dated June 20, 2006 (collectively, "ProShares Letters"); *see also* letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Clifford Chance, US LLP, dated October 25, 2005 re PowerShares Lux NanoTech Portfolio as well as letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart M. Strauss, Clifford Chance, dated March 2, 2005 with respect to PowerShares Exchange-Traded Fund Trust and its PowerShares WilderHill Clean Energy Portfolio (collectively, "PowerShares Letters"); *see also* streetTRACKS Series Trust, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart Strauss, Mayer, Brown & Platt, dated September 26, 2000; and *see also* Select Sector SPDR Trust, letters from Larry E. Bergman, Senior Associate Director, Division of Market Regulation to Stuart M. Strauss, Gordon Altman Butowsky, dated December 14, 1998 and December 22, 1998 (the open-end management investment companies that are the subject of these letters are collectively referred to as the "Open-End ETFs").

*See also*, BLDRS Trust, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Edward S. Knight, Executive President and general counsel, NASDAQ, dated November 13, 2002, (regarding an extension to NASDAQ of the application of "generic relief previously granted to the AMEX with respect to certain exchange traded funds occasioned by the listing of BLDRS for trading on the NASDAQ ("BLDRS Letter"); Nasdaq 100 Trust (with respect to trading of QQQ), Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated March 3, 1999 ("Nasdaq-100 Letter"); DIAMONDS Trust, letter from Larry E. Bergman, Senior Associate Director, Division of Market Regulation to James F. Duffy, Executive Vice President and Counsel, AMEX, dated January 9, 1998 ("DIAMONDS Letter"); MidCap SPDR Trust, letter from Nancy Sanow, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated April 21, 1995 ("MidCap SPDR Letter"); SPDR Trust, Series 1, letter from Nancy Sanow, Assistant Director, Division of Market Regulation to James Duffy, Senior Vice President and General Counsel, AMEX, dated January 22, 1993 ("SPDR Letter"); and The SuperTrust Trust; Letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, to James E. Duffy, Esq. of the AMEX, dated June 24, 1992 (the unit investment trusts that are the subject of these letters are collectively referred to as the "UIT ETFs"). (Open-End ETFs and UIT ETFs are collectively referred to herein as the "Prior ETFs").

<sup>6</sup> *See*, for example, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Michael Schmidtberger, Esq. Sidley Austin Brown & Wood LLP dated January 19, 2006 with respect to DB Commodity Index Tracking Fund and DB Commodity Services LLC; letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Kathleen H. Moriarty, Carter, Ledyard & Milburn LLP, dated December 12, 2005, with respect to StreetTRACKS Gold Trust and letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Kathleen H. Moriarty of Carter, Ledyard & Milburn LLP, dated November 17, 2004, with respect to the streetTRACKS Gold Trust; letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to David Yeres, Clifford Chance, dated December 12, 2004, with respect to iShares COMEX Gold Trust and letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to David Yeres, Clifford Chance US LLP, dated January 27, 2005, with respect to the iShares COMEX Gold Trust; letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to George T. Simon, Foley & Lardner, LLP, dated December 5, 2005, with respect to the Euro Currency Trust (the financial products that are the subject of these letters are collectively referred to as the "Prior ETVs"); *see also* letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath of the AMEX, dated November 3, 1999, regarding the trading of HOLDRs.

<sup>7</sup> *See* letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Claire P. McGrath, Esq., Vice President and Special Counsel, The American Stock Exchange, dated August 17, 2001

certain commodity based ETVs<sup>8</sup>. Applicants represent that each of the Trust's Initial Additional Funds will be structured and managed in the same manner as described in the Prior Request Letter (but for one non-material difference<sup>9</sup>); that is, each Initial Additional Fund will be structured as a "fund of funds" holding shares of Prior ETFs and Prior ETVs, rather than shares of issuers of individual equity securities, as discussed below.

Applicants have carefully reviewed the ETF Class Relief Letters, and have determined that their grant of relief from Rule 10b-17 of the 1934 Act and Rules 101 and 102 of Regulation M thereunder do not extend to the Initial Additional Funds because they do not meet the terms of Condition 2 of the Equity ETF Class Relief Letter. As discussed below in Part IV the Initial Additional Funds will not hold twenty (20) or more "Component Securities" and may from time to time hold a Prior ETF and/or Prior ETV in excess of 25% of the total value of such Initial Additional Fund<sup>10</sup>. Applicants note that each of the Prior ETFs and Prior ETVs held in each Initial Additional Fund's portfolio will either (i) meet all of the criteria established in the Equity ETF Class Relief Letter, the SIA Letter or the ETV Class Relief Letter, respectively, or (ii) have received individual relief pursuant to one or more response letters from the Division, such as the WisdomTree Letters and the ProShares Letters cited in footnote 4 above.

Therefore, Applicants request the Relief discussed below and believe that this request is appropriate for the reasons stated herein and because the Division has stated in the Equity ETF Class Relief Letter that "requests for relief for products not meeting the above criteria will

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(re: Exemptive Relief for Exchange Traded Index Funds) ("2001 Class Letter")"; *see also*, letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated January 3, 2005 (re: No-action Relief From Rule 200(g) of Regulation SHO); letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee, dated November 21, 2005 re: Expanded Class Relief for ETFs with respect to Section 11(d)(1) of the 1934 Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 under the 1943 Act) ("SIA Letter")"; letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006) (re: ETFs comprised of Equity Securities and incorporating relief from certain prior letters) ("Equity ETF Class Letter")"; letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskel, Esq., Willkie Farr & Gallagher LLP (April 9, 2007) ("Fixed Income ETF Class Letter") and letter from Josephine Tao, Associate Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP with respect to ETFs that are comprised of both equity as well as fixed-income securities ("Combination ETF Class Letter") (collectively, "ETF Class Relief Letters which provided relief to those ETFs meeting the conditions set forth therein (collectively, *ETF Class Relief*"). *See also*, letter from Joseph Furey, Acting Co-Chief Counsel, Division of Trading and Markets to W. John McGuire, Esq. Morgan Lewis and Bokius LLP dated June 16, 2011 with respect to certain class relief for ETFs structured as funds of funds ("ETF Fund of Funds Class Letter").

<sup>8</sup> *See*, letter from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processes, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP dated June 21, 2006 ("ETV Class Relief Letter").

<sup>9</sup> The difference is that the Initial Additional Funds will not use the services of a sub-adviser; as did the Initial Funds.

<sup>10</sup> *See*, Equity ETF Class Relief Letter, at 2 of 7

continue to be considered upon request on a case by case basis"<sup>11</sup>. The Relief requested is identical to the Prior Relief granted by the Commission and is virtually identical to the relief granted in the ETF Class Relief Letters.

This letter is divided into six parts. Part I is a description of the Trust and its Initial Additional Funds that will be listed for trading on an Exchange, Part II is a description of the Trust's disclosure documents with respect to its Initial Additional Shares, Part III contains a discussion of dissemination of information regarding Initial Additional Shares, Part IV contains a discussion of the ETF Class Relief, Part V contains Applicants' requests for relief and Part VI is the conclusion.

## PART I

### A. THE TRUST AND ITS FUNDS

#### I. General

The Trust was organized on July 1, 2008 as a Delaware statutory trust, is a registered open-end management investment company and is authorized to issue an unlimited number of Funds. As described in this letter, Applicants intend that each Initial Additional Fund offer a single class of "Initial Additional Shares" to be listed and traded in the secondary market on the Exchange described in Subsection III below which are the subject of this request for Relief. Each Initial Additional Fund will use a particular index also identified in Subsection III below ("Initial Additional Index") that was established by IndexIQ<sup>12</sup> or "Index Provider", and is calculated, maintained and disseminated by the Calculation Agent (defined below) in the manner and according to the Rule Book (as defined and described below). As discussed below, each Initial Additional Fund will be structured as an exchange-traded fund of funds, which, apart from holding shares of Prior ETFs and Prior ETVs rather than individual corporate securities, will operate in a manner very similar to that of such ETFs and ETVs held in its portfolio.

The Trust intends to offer and sells its Initial Additional Shares pursuant to a "Registration Statement" filed with the Commission (Registration Nos. 33-152915 and 811-22227 on Form N-1A under the 1940 Act and the Securities Act of 1933, as amended (the "1933 Act") filed on February 2, 2016, at such time as it is declared effective by the Commission, anticipated to be on or about May 2, 2016. Each Initial Additional Fund is an index fund that seeks to track, as closely as possible, before fees and expenses, the performance of its stated Initial Additional Index by holding a portfolio of investments selected to correspond generally to the price and yield performance of such index ("Portfolio Holdings"). The Portfolio Holdings of each Initial Additional Fund will be comprised of the individual components of its stated Initial Additional Index (collectively, "Index

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<sup>11</sup> *Ibid.*, at 7 of 7.

<sup>12</sup> The principals of IndexIQ are also principals of IndexIQ Advisors LLC, which acts as the investment advisor to the Trust ("Advisor") as further described below. Therefore, IndexIQ is an "affiliated person" of the Advisor, Trust and its Funds within the meaning of Section 2(a) (3) of the 1940 Act.

Constituents"). Each Initial Additional Fund intends to qualify as a "regulated investment company" for purposes of the Internal Revenue Code.

IndexIQ, as the Index Provider to each Initial Additional Fund, has designed a proprietary, rules-based process ("Process") to create each Initial Additional Index, as briefly described below. Each Initial Additional Index will be "transparent" because the rule-book derived from such Process ("Rule-Book") and the composition of each such index will be freely available to the public.<sup>13</sup> As disclosed in its Prospectus, each Initial Additional Fund will use either a replication strategy or a "representative sampling" methodology to track its respective Initial Additional Index.

## II. Each Initial Additional Index is a "fund of funds" index

### (1) *General*

Each Initial Additional Index is a "fund of funds" index (each such index, a "FOF Index"), meaning that its Index Constituents are shares issued by Prior ETFs and Prior ETVs currently listed and traded on an Exchange, rather than shares of individual corporate issuers. As each Initial Additional Fund is based upon a FOF Index, the Portfolio Holdings of each Initial Additional Fund will be comprised of shares of the Prior ETFs and Prior ETVs that are the Index Constituents of its stated Initial Additional Index. In order to be included as an Index Constituent in a FOF Index, each Prior ETF or Prior ETV must be (i) either an ETF registered under the 1940 Act or a Prior ETV issuing equity securities, (ii) organized in the U.S., (iii) comprised of at least \$50 million in assets under management initially and as of the date of the annual index reconstitution<sup>14</sup> and (iv) listed on an Exchange. Index Constituents may include inverse ETFs (i.e., ETFs that produce investment results that are opposite of a particular benchmark index) and ultra inverse ETFs (i.e., ETFs that produce investment results that are opposite of a particular benchmark index by a factor greater than one). Applicants note that because each Initial Additional Fund will invest in each Prior ETF in reliance on the provisions of Section 12(d)(1)(A) of the 1940 Act and in accordance with the agreements with Authorized Participants (defined below), no more than 3% of the total outstanding shares of such Prior ETF may be held by any one Fund, or by all of the Initial Additional Funds if more than one Initial Additional Fund includes the same Prior ETF in its Portfolio Holdings.<sup>15</sup>

### (2) *Brief Overview of Process Used to Construct the Initial Additional Indexes.*

The Index Provider used its Process to construct each Initial Additional Index (each of which is an FOF Index). First, the Index Provider chose a group of Prior ETFs and PRIOR ETVs meeting all of the requirements stated immediately above to create the universe from which the individual Index Constituents will be selected ("Selection Universe"). Each Index Constituent

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<sup>13</sup> See, Part I.A.II.3. below.

<sup>14</sup> See, Part I.B.II. below.

<sup>15</sup> See also, Part V.A. and footnote 31 below

also must have publically available last-sale information. Next, the Index Provider applied the Process to the Selection Universe, using the Rule Book, to select the actual Index Constituents for each FOF Index. In brief, the Process for each FOF Index used by the Initial Additional Funds is a quantitative process designed to select individual Index Constituents that, when combined together, will produce an FOF Index designed to meet the investment objective of its stated Initial Additional Fund as described in the Trust's Registration Statement.

(3) *Portfolio Holdings of the Initial Additional Funds*

In all cases, at least 80% of each Initial Additional Fund's Portfolio Holdings is, and will be, shares of some or all of the Prior ETFs and Prior ETVs that are the Index Constituents of its stated Initial Additional Index. Some or all of the remaining 20% may be invested in securities that are not Index Constituents which the Advisor believes will help the Initial Additional Fund track its FOF Index ("Non-Index Constituents"), as well as cash, cash equivalents and various types of financial instruments including, but not limited to, futures contracts, swap agreements, forward contracts, reverse repurchase agreements and options on securities, indices and futures contracts (collectively, "Financial Instruments"). In no case will an Initial Additional Fund hold any non-ETP equity security issued by a single issuer in excess of 20% of such Initial Additional Fund's Portfolio Holdings. Each Initial Additional Fund generally will invest in each of the Index Constituents of its FOF Index in proportion to its weighting in such FOF Index. However, under various circumstances, it may not be possible or practicable to purchase all of the Index Constituents in those weightings; in such circumstances, an Initial Additional Fund may invest in a sample of the Index Constituents of its FOF Index. There may also be instances in which the Advisor may choose to overweight another Index Constituent of the FOF Index, purchase Non-Index Constituents which the Advisor believes are appropriate to substitute for certain Index Constituents of the FOF Index or utilize various combinations of other available investment techniques, in seeking to track such FOF Index. In all cases, the Portfolio Holdings of each Initial Additional Fund will have been selected pursuant to the rules-based Process described below in an attempt to track its Initial Additional Index, that is, no Initial Additional Fund will attempt to beat its respective FOF Index. The relevant Rule Book, along with a list of Index Constituents in which each Initial Additional Fund invests, will be made available at the Trust's website: [www.indexiq.com](http://www.indexiq.com) ("Website"). Each Initial Additional Fund will invest in Portfolio Holdings that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges. Applicants believe that arbitrageurs can be expected to take advantage of price variations between each Initial Additional Fund's market price and its NAV, and that the arbitrage mechanism will be facilitated by the transparency of each Fund's portfolio and the availability of the Fund's Estimated NAV( discussed below), the liquidity of securities and other assets held by each Fund, and the ability to acquire such securities , as well as arbitrageurs' ability to create workable hedges. Applicants expect that a close alignment between the market price of the Initial Additional Shares and their Initial Additional Fund's NAV.

(4) *Portfolio Holdings of the Underlying ETFs and ETVs.*

Each individual Prior ETF that is an Index Constituent of an Initial Additional Index ("Underlying ETF") is a registered investment company advised by entities unaffiliated with the

Advisor.<sup>16</sup> Each Underlying ETF follows its own specified underlying index ("Underlying Index") that is primarily comprised of shares of issuers of individual equity and/or debt securities. Therefore, the portfolio assets of each Underlying ETF will principally be comprised of the individual securities components of its Underlying Index (collectively, "Underlying Securities"). The Underlying Securities of each Underlying ETF will be one or more of the following instruments: U.S. equities, non-U.S. equities, U.S. and non-U.S. fixed income securities, as well as Depositary Receipts, REITS and derivatives that provide similar exposure to its Underlying Index. In addition, the remainder of the Underlying ETF's portfolio assets may be comprised of Financial Instruments described above.

Each individual Prior ETV that is an Index Constituent of an Initial Additional Index ("Underlying ETV") will be sponsored by entities unrelated to the Advisor. Each Underlying ETV will follow its own specified underlying index or method of selecting assets. The assets held by each Underlying ETV will be some or all of the Financial Instruments described above, as well as commodities and currencies. On each day that the NYSE is open for business (each such day a "Business Day"), before the commencement of trading in Shares on Arca, each Initial Additional Fund will disclose on the Website the identities and quantities of the Underlying ETFs and ETVs and other assets held by such Initial Additional Fund that will form the basis for the calculation of NAV at the end of such day.

### III. Initial Additional Funds

Each of the four Initial Additional Funds seeks the investment results described in its respective prospectus, as briefly described below. The Initial Additional Funds and their respective Initial Additional Indexes are as follows:

<u>Name of Initial Additional Funds:</u>	<u>Name of Initial Additional Indexes:</u>
IQ Enhanced Core Bond U.S. ETF	IQ Enhanced Core Bond U.S. Index.
IQ Enhanced Core Plus Bond U.S. ETF	IQ Enhanced Core Plus Bond U.S. Index
IQ Leaders Bond Allocation Tracker ETF	IQ Leaders Bond Allocation Index
IQ Leaders GTAA Tracker ETF	IQ Leaders GTAA Index

#### *IQ Enhanced Core Bond U.S. ETF*

The IQ Enhanced Core Bond U.S. ETF seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its Initial Additional Index, the IQ Enhanced Core Bond U.S. Index. As described in the statutory prospectus ("Prospectus") contained in the Fund's Registration Statement<sup>17</sup>, the IQ Enhanced Core Bond U.S. Index was designed to weight each of the various sectors of the investment grade fixed income market based on such index's overall level of risk as measured by volatility and the total return momentum of each fixed income sector, so that such index will overweight fixed income sectors

<sup>16</sup> Each FOF Fund will be considered an "unaffiliated fund of funds" in reliance upon the provisions of Section 12(d)(1)(A) of the 1940 Act. See, Part I.A.II.1. above and Part V.A. and footnote 31 below.

<sup>17</sup> See, the preliminary Prospectus contained in the Trust's Registration Statement dated February 2, 2016.



with high momentum and underweight fixed income sectors with low momentum, with constraints to maintain sector diversification.

#### *IQ Enhanced Core Plus Bond U.S. ETF*

The IQ Enhanced Core Plus Bond U.S. ETF seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its Initial Additional Index, the IQ Enhanced Core Plus Bond U.S. Index. As described in the Fund's Prospectus<sup>18</sup>, the IQ Enhanced Core Plus Bond U.S. Index was designed to weight each of the various sectors of the investment grade and high yield fixed income securities market based on such index's overall level of risk as measured by volatility and the total return momentum of each fixed income sector, so that such index will overweight fixed income sectors with high momentum and underweight fixed income sectors with low momentum, with constraints to maintain sector diversification.

#### *Leaders Bond Allocation Tracker ETF*

The IQ Leaders Bond Allocation Tracker ETF seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its Initial Additional Index, the IQ Leaders Bond Allocation Index. As described in the Fund's Prospectus<sup>19</sup>, such index seeks to track the "beta" portion of the returns of the 10 leading bond mutual funds pursuing a global bond strategy. The Fund does not invest in bond mutual funds and the Underlying Index does not include bond mutual funds as Underlying Index Components.

#### *IQ Leaders GTAA Tracker ETF*

The IQ Leaders GTAA Tracker ETF seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its Initial Additional Index, the IQ Leaders GTAA Index. As described in the Fund's Prospectus<sup>20</sup>, such index seeks to track the "beta" portion of the returns of the 10 leading global allocation mutual funds based on fund performance and fund asset size. Global allocation mutual funds typically invest in a combination of equity, fixed-income and money market securities of U.S. and foreign issuers, and may also invest in other asset classes such as commodities. The Fund does not invest in

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<sup>18</sup> *Ibid.*

<sup>19</sup> See, the Prospectus contained in the Trust's registration statement, File Nos. 333-152915 and 811-22227 dated September 11, 2015 (as revised September 24, 2015) filed with the Commission on the EDGAR system. This Fund has been registered but has not yet listed or offered any of its Shares.

<sup>20</sup> The registration statement for the IQ Leaders GTAA Tracker ETF File Nos. 333-152915 and 811-22227 was declared effective on September 11, 2015 and its Shares were listed on Arca on September 30, 2015. The IQ Leaders GTAA Tracker ETF currently relies on the Class Relief granted in the Equity ETF Class Relief Letter because it meets the 20 Security Requirements as defined in such letter. So that the IQ Leaders GTAA Tracker ETF may be eligible to rely on the Relief in the future, it has been added to the list of Initial Additional Funds requesting relief herein.

global allocation mutual funds and the Underlying Index does not include global allocation mutual funds as Underlying Index Components.

## **B. OTHER PARTIES**

### **I. Advisor**

IndexIQ Advisors, as Advisor, is, and will be, the investment adviser to each of the Initial Additional Funds. The Advisor is a limited liability company, with its principal office currently located at 800 Westchester Avenue, Suite N-611, Rye Brook, NY 10573 and is registered as an "investment adviser" under Section 203 of the Advisers Act. The Advisor is affiliated within the meaning of Section 2(a)(3) of the 1940 Act with the Index Provider (see below). The Initial Additional Funds will not have a sub-adviser.

### **II. Distributor and Authorized Participants**

ALPS Distributors, Inc., a broker-dealer registered under the 1934 Act and a member of the Financial Industry Regulatory Authority ("FINRA"), will act as the Distributor and principal underwriter of the Creation Units of the Initial Additional Shares ("Distributor"). The Distributor will distribute Initial Additional Shares on an agency basis. The Distributor is not affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with the Advisor, Arca, any other Exchange, the Index Provider, or the Calculation Agent.

Entities that have entered into an agreement with the Distributor to become "Authorized Participants" may place orders with the Distributor to directly purchase or redeem Creation Units, as described below. An Authorized Participant must be an entity (i) that is a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), a clearing agency that is registered with the Commission, or a DTC Participant, and (ii) which has executed an agreement with the Distributor with respect to creations and redemptions of Creation Units (defined below) with the Distributor. Authorized Participants may be, but are not required to be, members of the primary listing Exchange. Authorized Participants are generally broker-dealers and are not compensated by the Trust or any Initial Additional Fund in connection with the issuance or redemption of Shares. Authorized Participants are not affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with the Advisor, Arca, any other Exchange, the Index Provider, or the Calculation Agent.

### **III. Administrator/Custodian/Transfer Agent/ Securities Lending Agent/Fund Accounting Agent**

The Trust may appoint the Advisor or other service providers to act as administrator ("Administrator"), custodian ("Custodian"), transfer agent ("Transfer Agent"), Fund Accounting Agent ("Fund Accounting Agent") and securities lending agent ("Securities Lending Agent") for the Trust. The Bank of New York Mellon ("BNY Mellon"), located at One Wall Street, New York, NY 10286, will act as Transfer Agent, Custodian, Administrator and Fund Accounting Agent for the Trust and the Initial Additional Funds, for which it will receive fees. BNY Mellon is authorized to appoint certain foreign custodians or foreign custody managers for Initial Additional Fund investments outside the United States ("Sub-Custodians"). BNY Mellon is not

affiliated (within the meaning of Section 2(a)(3) of the 1940 Act) with NYSE Arca, any other Exchange, the Advisor, the Distributor or the Index Provider. Initial Additional Funds may lend their Portfolio Holdings and will use a "Securities Lending Agent" for such purposes; the Securities Lending Agent will share in a portion of the revenue derived from lending each Initial Additional Fund's Portfolio Holdings. The identity of the Advisor, Administrator, Custodian, Transfer Agent and Fund Accounting Agent is, and will be, disclosed in each Initial Additional Fund's Prospectus. If any such persons are "affiliated" persons within the meaning of Section 2(a)(3) of the 1940 Act with the Trust, the Advisor or the Distributor, such affiliation will also be disclosed and the performance of their duties and obligations will be conducted within the provisions of the 1940 Act and the rules thereunder.

#### Index Provider and Index Calculation Agent

IndexIQ is the owner and creator of the Initial Additional Indexes ("Index Provider"). As its principals are also principals of the Advisor, the Index Provider is an "affiliated person" (within the meaning of Section 2(a)(3) of the 1940 Act) of the Advisor, the Trust and the Initial Additional Funds. The Index Provider has adopted policies and procedures, similar to those described in the WisdomTree Letters, designed to prevent the dissemination and improper use of non-public information about changes to the constituents of each Initial Additional Index and the Process. These policies and procedures are intended to limit or prohibit communication between the "Index Administrator" (the employee of IndexIQ with ultimate responsibility for the Initial Additional Indexes and Process), the "Index Group" (those employees of IndexIQ appointed to assist the Index Administrator in the performance of his/her duties) and the employees of the Advisor with respect to issues related to the maintenance, calculation and reconstitution of the Initial Additional Indexes. The Index Provider may retain affiliated or unaffiliated third parties to assist it with maintenance, calculation and recalculation of Initial Additional Indexes. Among other things, the Index Administrator and Index Group are solely responsible for the creation and development of the Process and determining the nature of modifications to the Process and do not, and will not, have any responsibility for management of the Initial Additional Funds. Also, the Index Provider has publicly disclosed the Process governing the construction and maintenance of the Initial Additional Indexes, and although it has reserved the right to modify the Process from time to time, it is required to publish notification of all such changes well in advance of their implementation, thus eliminating any advantage that the Advisor or any Initial Additional Fund could enjoy over other market participants, including the investing public. In addition, the Index Administrator and Index Group are prohibited from providing information with respect to prior knowledge of companies that may be added to or deleted from an Initial Additional Index or from any Initial Additional Fund to the Advisor, or any person affiliated with it or any Initial Additional Fund.

IndexIQ has entered into a "Calculation Agent Agreement" with Solactive AG to act as "Calculation Agent". The Calculation Agent is not, and will not be, an affiliated person of the Initial Additional Funds, the Advisor, any promoter or the Distributor. Pursuant to the terms of the Calculation Agent Agreement, the Index Provider initially applied the Process to the Selection Universe and determined the number, type and weight of Index Constituents that will comprise each Initial Additional Index and will perform all calculations necessary to determine the proper makeup of each such index. Thereafter, (i) the Calculation Agent will be solely responsible for the calculation and maintenance of each Initial Additional Index, as well as the

dissemination of the values of each such index and (ii) IndexIQ, the Index Provider will be responsible solely for performing the reconstitution updates and rebalance updates for each such index, as specified in the relevant Rule Book.

The Calculation Agent will disseminate Initial Additional Index information through one or more unaffiliated third party data provider, Index values on a total return basis will be disseminated on an end-of-day basis through such third party data provider(s) and "price index values" of each Index will be calculated by the Calculation Agent and disseminated every 15 seconds to be printed to the Consolidated Tape. The Index Group will monitor the results produced by the Calculation Agent on a periodic basis to determine whether the Calculation Agent is performing such maintenance, calculation and dissemination functions in accordance with the Process. Applicants note that the structural arrangements, policies and procedures described in this section are identical to those described in the Original Request Letter.

**C. MANAGEMENT OF THE INITIAL ADDITIONAL FUNDS - INDEXING APPROACH**

The Trust's Board of Trustees ("Board") has responsibility for the overall management of the Initial Additional Funds. The Advisor, subject to the supervision of the Board, is responsible for the investment management of each of the Initial Additional Funds. As described in each Prospectus, the Initial Additional Funds are not actively managed; rather, each will use an indexing investment approach, designed to closely track the investment performance of its stated index. Applicants observe that this management structure and the indexing approach are identical to those described in the Prior Request Letter.

**D. INITIAL ADDITIONAL SHARES**

As described in subparts I.E. through I.H. below, each Initial Additional Fund will issue and redeem Initial Additional Shares only in aggregations of 50,000 ("Creation Units"). Initial Additional Shares will not be individually redeemable; only Initial Additional Shares combined into Creation Units will be redeemable<sup>21</sup>. Purchasers of Creation Units will be able to disaggregate Creation Units into the individual Initial Additional Shares comprising such Creation Unit. The initial value of an individual Initial Additional Share will vary depending on the Initial Additional Fund, but the initial value of any Creation Unit can be expected to be in excess of \$1 million dollars.

It is not expected that the Distributor or any other entity will maintain a secondary market in individual Initial Additional Shares. The Exchange will designate one or more member firms to act as a market maker and maintain a market for the Initial Additional Shares that trade on that Exchange ("Market Maker"). The Initial Additional Shares will trade on the Exchange in a manner similar to the shares of its Initial Funds, as well as of shares of Prior ETFs, such as those issued by WisdomTree, ProShares, SPDRs, iShares, Select Sector SPDRs and PowerShares currently listed and traded on an Exchange.

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<sup>21</sup> For any particular Initial Additional Fund, the number of Shares in a Creation Unit will not change, except in event of a share split, reverse split or similar revaluation

Initial Additional Shares will be registered in book-entry form only; the Initial Additional Funds will not issue individual share certificates for Initial Additional Shares. The Depository Trust Company ("DTC") will serve as securities depository for Shares and DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Initial Additional Shares will be shown on the records of DTC or a broker-dealer that is a participant in DTC (a "DTC Participant"). Beneficial owners of Initial Additional Shares ("Beneficial Owners") will receive, at the relevant Initial Additional Fund's expense, all of the statements, notices, and reports required under the 1940 Act and other applicable laws ("Required Materials").

## **E. PURCHASING INITIAL ADDITIONAL SHARES**

### **I. General**

The Trust will continue to be structured as described in the Prior Request Letter and in a manner similar to other Prior ETFs and therefore it will offer, issue and sell Initial Additional Shares of each Initial Additional Fund in Creation Units through the Distributor on a continuous basis at the net asset value (sometimes referred to herein as "NAV") per share next determined after receipt of an order in proper form. The NAV of each Initial Additional Fund is expected to be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern Time ("ET")), on each Business Day. The Trust will sell and redeem Creation Units of each Initial Additional Fund on every Business Day and will not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption for more than seven days, other than (a) any period during which the NYSE is closed other than customary weekend and holiday closings, (b) any period during which trading on the NYSE is restricted, (c) any period during which an emergency exists as a result of which disposal by the Trust of securities owned by it is not reasonably practicable or it is not reasonably practicable for the Trust to determine the value of its net assets, and (d) for such other periods as the Commission by order permit for the protection of holders of Initial Additional Shares.

### **II. "In-Kind Deposit/Payment" and Balancing Amount**

Initial Additional Shares of each Initial Additional Fund will be issued only in Creation Units to Authorized Participants, and only in exchange for (i) primarily a specified "In-Kind" deposit, by the purchaser, of a basket of specified Prior ETFs and ETVs, plus any other specified equity or debt security, if applicable ("Creation Basket"), most or all of which are contained in the FOF Index for such Initial Additional Fund, plus (ii) the specified cash Balancing Amount (described below). The identities and amounts of the components of the Creation Basket will be made available daily to Authorized Participants. Likewise, redemptions of Initial Additional Shares of each Initial Additional Fund in Creation Units generally will be made by the Trust (i) primarily in an In-Kind payment to Authorized Participants as briefly described below, plus (ii) the specified cash Balancing Amount. By requiring that purchase and redemption transactions involving Initial Additional Shares be made primarily In-Kind rather than in cash, the Initial Additional Funds intend to minimize portfolio turnover, brokerage expenses, and other transaction costs.

Each day the Advisor will specify an amount of cash that must accompany the Creation Basket or the Redemption Basket ("Balancing Amount"). The Balancing Amount serves the

function of compensating for differences, if any, between the NAV (per Creation Unit) of an Initial Additional Fund and the total aggregate market value (per Creation Unit) of the Creation Basket or the Redemption Basket, as the case may be. As Financial Instruments cannot be delivered In-Kind, the Balancing Amount accompanying a Creation Basket for each Initial Additional Fund will also include the cost of any Financial Instrument that will become a Portfolio Holding of such Fund, and the Balancing Amount accompanying a Redemption Basket for each Initial Additional Fund will also include the cost of any Financial Instrument that is a Portfolio Holding of such Fund.

### III. Secondary Market Trading of Individual Initial Additional Shares

Individual Initial Additional Shares of each Initial Additional Fund will be listed on Arca and traded in the secondary market in the same manner as other equity securities, including the shares of the Initial Funds and those issued by the Prior ETFs. The price of Initial Additional Shares trading in the secondary market will be based on a current bid/offer market. No secondary sales will be made to brokers or dealers at a concession by the Distributor or by any Initial Additional Fund. Transactions involving the sale of Initial Additional Shares in the secondary which will be between purchasers and sellers and will not involve an Initial Additional Fund will be subject to customary brokerage commissions and charges. This is the same method employed in connection with the shares of the Initial Funds and those issued by the Prior ETFs, and Applicants expect that Initial Additional Shares will trade in a similar manner; that is, the price at which Initial Additional Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at NAV, which should ensure that Initial Additional Shares do not trade at a material premium or discount in relation to their NAV.

## F. PROCEDURES APPLICABLE TO THE PURCHASE OF INITIAL ADDITIONAL FUNDS

### I. Placement of Purchase Orders

All orders to purchase Creation Units directly from an Initial Additional Fund must be placed with the Distributor by or through an "Authorized Participant," which is a DTC Participant that has executed a "Participant Agreement" with the Distributor. Once a purchase order has been placed and accepted, the Distributor will inform the Advisor, and the Initial Additional Fund's Custodian. The Authorized Participant will deliver to the Custodian, on behalf of itself or the Beneficial Owner, the relevant Creation Basket (or the cash value of all or a part of such Creation Basket, in the case of a permitted or required cash purchase or "cash in lieu" amount), with any appropriate adjustments as determined by the Initial Additional Fund, plus the specified Balancing Amount. Creation Baskets and Balancing Amounts must be delivered to the accounts maintained at the Custodian.

All orders to purchase Creation Units must be received by the Distributor no later than the closing time of the NYSE ("Closing Time") on the date the order is placed (the "Transmittal Date") in order for the purchaser to receive the NAV determined on the Transmittal Date. The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases. The Distributor will transmit all accepted purchase orders to the relevant Initial Additional Fund. After an Initial Additional Fund has received delivery of the Creation Basket and any accompanying cash payment, including the Balancing Amount, DTC will instruct the

Initial Additional Fund to initiate "delivery" of the appropriate number of Initial Additional Shares to the book-entry account specified by the purchaser.<sup>22</sup> The Distributor will furnish the Prospectus for the relevant Initial Additional Shares and a confirmation to those placing purchase orders for Creation Units.

## II. Payment for Creation Units

Persons purchasing Creation Units from an Initial Additional Fund generally must make an "In-Kind" deposit of the Creation Basket together with an amount of cash specified by the Advisor the "Creation Balancing Amount"), plus the applicable Transaction Fee (defined below). The Creation Basket, the Creation Balancing Amount, and Transaction Fee collectively are referred to as the "Creation Deposit". As mentioned above, the Creation Balancing Amount is a cash payment designed to ensure that the NAV of a Creation Deposit is identical to the NAV of the Creation Unit it is used to purchase and is the amount equal to the difference between the NAV of a Creation Unit and the market value of the Creation Basket<sup>23</sup>. The Initial Additional Funds reserve the right to permit or require the Initial Additional Share purchaser to substitute an amount of cash or a different security to replace any portion of a prescribed Creation Basket,<sup>24</sup> as described in the Trust's application submitted in connection with the receipt of its Order under the 1940 Act ("1940 Act Application").

On each business day before the opening of business on the Exchange, each Fund's custodian, through NSCC, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests.<sup>25</sup> The Custodian also will make available on a daily basis information about the previous day's Balancing Amount.

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<sup>22</sup> Creation Units may be issued to an Authorized Participant even though the corresponding Creation Basket has not been received in whole or in part, where reliance is made on the undertaking of the Authorized Participant to deliver the missing Creation Basket as soon as possible, where such undertaking is secured by the Authorized Participant's delivery and maintenance of collateral

<sup>23</sup> If the market value of the Creation Basket is greater than the NAV of a Creation Unit, then the Creation Balancing Amount will be a negative number, in which case the Creation Balancing Amount will be paid by the Fund to the purchaser, rather than vice-versa

<sup>24</sup> In the future, an Initial Additional Fund may require a Share purchaser to purchase a Creation Unit entirely for cash under certain limited circumstances. For example, on days when a substantial rebalancing of a Fund's Portfolio Holdings is required, such Fund may prefer to receive cash instead of In-Kind securities so that it has liquid resources on hand to make the necessary purchases

<sup>25</sup> The identity and number of components in a Creation Basket required for a Creation Deposit will change from time to time in response to changes in the composition of an Index, or portfolio adjustments by the Advisor. In accordance with the Advisor's Policies and Procedures, all personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

## G. PROCEDURES APPLICABLE TO THE REDEMPTION OF INITIAL ADDITIONAL FUNDS

The Initial Additional Shares, like the shares of the Initial Funds and the shares issued by Prior ETFs, will be redeemable on any day that the NYSE is open, subject to the terms and conditions described below and in accordance with the 1940 Act and the rules thereunder, as modified by the 1940 Act Application.

### Placement of Redemption Orders

Just as Initial Additional Shares can be *purchased* from an Initial Additional Fund only in Creation Units, such shares similarly may be *redeemed* only if tendered in Creation Units. As required by law, redemption requests in good order will receive the NAV next determined after the request is made. Except in unusual circumstances, Initial Additional Shares will be redeemed primarily by an "In-Kind" payment, together with a cash payment of the Redemption Balancing Amount, as described briefly below.

#### I. Redemption Proceeds

Shares in Creation Units will be redeemable on any day on which the NYSE is open primarily in exchange for an "In-Kind" basket of an Initial Additional Fund's Portfolio Holdings ("Redemption Basket"). The Advisor will make available on each Business Day, prior to the opening of trading on the Exchange, a list of the names and amount of each component of the Redemption Basket that will be given to the Authorized Participants tendering Shares for redemption. The contents of the Redemption Basket provided to such redeemers may or may not be the same as the contents of the Creation Basket required of creators purchasing Creation Units on the same day.<sup>26</sup> Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Basket, the redeemer of a Creation Unit will either receive from, or pay to, the Initial Additional Fund the Balancing Amount equal to the difference ("Redemption Balancing Amount"). (In the typical situation where the Redemption Basket is the same as the Creation Basket, this cash amount will be equal to the Creation Balancing Amount described above in Part I.G.).

An Initial Additional Fund typically will make redemptions primarily "In-Kind", but in all cases, whether payment is made entirely "In-Kind", entirely in cash, or in a combination of each, the value of its redemption payments must equal the NAV of the Initial Additional Shares tendered for redemption. Applicants currently contemplate that Creation Units of each Initial Additional Fund will be redeemed principally "In-Kind", except in certain circumstances. An Initial Additional Fund may make redemptions partly in cash in lieu of transferring "In-Kind" one or more of the components of the Redemption Basket to the redeeming investor if such Initial Additional Fund determines, in its discretion, that such alternative is warranted due to the unusual circumstances. This could happen, for example, if the redeeming investor is unable, by law or policy, to own a particular security that is a component of a Redemption Basket.

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<sup>26</sup> Under some circumstances, the Creation Basket and Redemption Basket could differ; see the 1940 Act Application.



## H. TRANSACTION FEE

Each Initial Additional Fund will impose a small "Transaction Fee" on investors purchasing or redeeming Creation Units. The maximum Transaction Fee will be fully disclosed in the Prospectus for each Initial Additional Fund.

## PART II

### A. DISCLOSURE DOCUMENTS

The primary disclosure document with respect to the Initial Additional Shares is, and will be, the Prospectus, briefly described below<sup>27</sup>. As with all investment company securities, including shares of Prior ETFs, the purchase of Initial Additional Shares in Creation Units from an Initial Additional Fund will be accompanied or preceded by the Prospectus for such Initial Additional Fund. A Prospectus also makes clear that Initial Additional Shares may be bought from an Initial Additional Fund only in Creation Units and redeemed with an Initial Additional Fund only if tendered in Creation Units. It also notes that an investor may incur brokerage costs in purchasing enough Initial Additional Shares to constitute a Creation Unit. In addition, the Prospectus discloses certain legal risks that are unique to persons purchasing Creation Units from an Initial Additional Fund, as well as all cautionary language and illustrative examples with respect to "distribution," "underwriting," "unsold allotments" that is required of all Prior ETF issuers.

The Prospectus also provides a plain English overview of an Initial Additional Fund, including its investment objective and investment strategies, the identity of the Initial Additional Fund's Advisor (and sub-adviser, if any), the material risks of investing in the Initial Additional Fund, and the composition and frequency of distributions. It also provides a brief, plain English description of the salient aspects of Initial Additional Shares. It also clearly discloses, among other things, that Initial Additional Shares are not redeemable individually, and that an investor selling Initial Additional Shares on the secondary market may incur brokerage commissions when selling such shares and may receive less than the NAV of such shares. In addition, the Prospectus provides the Website address where investors can obtain information about the composition and compilation methodology of an Initial Additional Fund's Index. The Website will make the Initial Additional Fund's Prospectus and Statement of Initial Additional Information ("SAI") available, as well as indicating that the Prospectus and the SAI may be obtained in hard copy, without charge, from the investor's broker or from the Distributor. The Advisor will coordinate the production and distribution of Prospectuses to broker-dealers. It will be the responsibility of the broker-dealers to ensure that a Prospectus is provided to each secondary market purchaser of Shares.

The SAI includes more detailed information about Initial Additional Shares, and will contain a detailed explanation of the procedures for purchasing and redeeming Creation Units.

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<sup>27</sup> Applicants may also elect to use and deliver a "Summary Prospectus" as permitted in the final rule adopted by the Commission in Release Nos. 33-8998; IC-28584; File No. S7-28-07(Jan. 13, 2009); *see* also footnote 9 of the 1940 Act Application

**B. WEBSITE**

As discussed above, the Portfolio Holdings of each Initial Additional Fund will be disclosed on the public website of the primary listing Exchange and/or the Trust.<sup>28</sup> The Trust, the Calculation Agent or the primary listing Exchange will also calculate and publish the “Estimated NAV” (discussed below) for each Initial Additional Fund. The Calculation Agent, or another organization authorized by the Index Provider or the Calculation Agent, will calculate and publish the current updated value of the relevant Initial Additional Index every 15 seconds throughout the trading day.

Each Business Day, the Website will publish free of charge (or provide a link to another website that will publish free of charge) the Index Constituents of each Initial Additional Index and their respective weightings in each Initial Additional Index as of the close of the prior Business Day. Also on each Business Day, the Website will publish free of charge (or provide a link to another website that will publish free of charge) the Portfolio Holdings held by each Fund and their respective weightings, and each Fund's per share NAV, last-traded price and midpoint of the bid/ask spread as of the NAV calculation time ("Bid/Ask Price"), all as of the prior Business Day.

**PART III**

**A. DISSEMINATION OF INFORMATION ABOUT CREATION AND REDEMPTION BASKETS**

As discussed above, the names and required number of shares of each component of the Creation Basket and the Redemption Basket to be tendered in connection with the issuance or redemption, respectively, of Initial Additional Shares in Creation Units for each Initial Additional Fund, will be made available by the Custodian through the facilities of NSCC on a daily basis prior to the opening of trading on Arca.

**B. DISSEMINATION OF INFORMATION ON TRADING IN THE DEPOSIT AND REDEMPTION SECURITIES**

The prices of each component of an Initial Additional Fund's Deposit Basket and Redemption Basket will be available from, as applicable, the relevant listing Exchange, other Markets, automated quotation systems, sources such as independent pricing services, newspapers and other publications prior to the opening of trading on Arca.

**C. DISSEMINATION OF INFORMATION ABOUT INITIAL ADDITIONAL SHARES**

In order to provide current Initial Additional Share pricing information for use by investors, professionals and persons wishing to create or redeem Initial Additional Shares, information will be made available by the Custodian through the facilities of NSCC including,

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<sup>28</sup> The Trust will comply with its obligations set forth in Form N-IA, to disclose in its policies and procedures with respect to the disclosure of its portfolio-securities and to state its Prospectus that a description of each Initial Additional Fund's policies and procedures is available in the SAI *See* Release No. IC-26418.

among other things, the previous day's Creation Cash Component. In addition to the information made available by the Custodian, it is expected that for each Initial Additional Fund, Arca will disseminate through the facilities of the Consolidated Tape (i) continuously throughout the trading day, the market price of an Initial Additional Share, and (ii) every 15 seconds throughout the trading day, a calculation of the Estimated NAV of an Initial Additional Share. The "Estimated NAV" of an Initial Additional Share is calculated using the current value of the cash and securities held in the portfolio of an Initial Additional Fund but does not reflect corporate actions, expenses and other adjustments made to such portfolio throughout the day. This estimate is anticipated to be very close to, but not a substitute for, the "real-time" NAV during such trading day. Comparing these two figures may allow an investor to determine whether, and to what extent, Initial Additional Shares are selling at a premium or a discount to NAV.

The Website, which is publicly accessible at no charge, will contain the following information on a per ETF Share basis, for each Initial Additional Fund: (i) the prior business day's NAV and the bid/asked price, and a calculation of the premium or discount of the bid/asked price at the time of calculation of the NAV against such NAV; and (2) data in a chart format for a period covering each four previous calendar quarters (or life of an Initial Additional Fund, if shorter) displaying the frequency distribution of discounts and premiums of the daily bid/asked price against the NAV.

#### **PART IV**

#### **Comparison of the Initial Additional Funds to the Other ETFs Which Have Sought Similar Commission Action and Received Similar Relief**

Applicants submit that the Relief requested herein is identical to that granted by the Commission in the Prior Relief Letter and believe that it is virtually identical to that granted in the ETF Class Relief Letters, WisdomTree Letters and to the other relief granted by the Commission to Prior ETFs in response to their individual requests.

#### **Applicability of the ETF Class Relief to the Initial Additional Funds**

Collectively, the ETF Class Relief Letters provide exemptive and/or no-action or interpretive relief with respect to Section 11(d)(1) of the 1934 Act and Rules 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5, 15c1-6 under such Act as well as Rules 101 and 102 of Regulation M, to any ETF that meets the criteria set forth in the Equity ETF Class Relief Letter and the SIA Letter. The Equity ETF Class Relief Letter sets forth five criteria that an ETF must meet in order to rely upon the ETF Class Relief. These are:

- "1. The ETF Shares are issued by an open-end investment company or unit investment trust registered with the Commission under the Investment Company Act;
2. The ETF consists of a basket of twenty or more Component Securities: with no one Component Security constituting more than 25% of the total value of the ETF;

3. At least 70% of the ETF must 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 the formation of the relevant ETF; provided, however, that if the ETF has 200 or more Component Securities, then 50% of the Component Securities must meet the actively-traded securities thresholds;
4. ETF shares are to be issued and redeemed in Creation Unit aggregations of 50,000 shares or such other amount where the value of a Creation Unit is at least \$1 million at the time of issuance; and
5. The ETF must be managed to track a particular index all of the components of which have publicly available last sale trade information. The intra-day proxy value of the ETF per share and the value of the "benchmark" index must be publicly disseminated by a major market data vendor throughout the trading day."<sup>29</sup>

Each Initial Additional Fund will meet all of the criteria of the Equity ETF Class Relief Letter set forth above with the exception of Condition 2; that is, none of the Initial Additional Funds will hold "a basket of twenty or more" <sup>30</sup> Index Constituents and one or more Initial Additional Funds may hold, from time to time, a Prior ETV and/or Prior ETF in excess of 25% of the total value of the Initial Additional Fund. As mentioned above, each of the Prior ETFs and Prior ETVs held by an Initial Additional Fund itself will have either met all conditions set forth in the Equity ETF Class Relief Letter and the SIA Letter, or the ETV Class Relief Letter, respectively or will have received individual relief from the Commission. Therefore, Applicants hereby request, in the alternative, that the Commission grant exemptive, interpretive or no-action relief from Rule 10b-17 of the 1934 Act and Rules 101 and 102 of Regulation M thereunder in connection with secondary market transactions in Shares of each Initial Additional Fund, and the creation or redemption of Initial Additional Shares of such Initial Additional Funds, as discussed below. As noted above, this relief is identical to the Prior Relief and to that granted in the ETF Class Letters.

## PART V

### **A. 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

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<sup>29</sup> See, Equity ETF Class Relief Letter at 2.

<sup>30</sup> See, Equity ETF Class Relief Letter at 2.

securities in accordance with Rule 10b-17(b). Applicants respectfully request the Commission, pursuant to paragraph (b)(2), exempt the Trust from the application of Rule 10b-17.

Applicants believe that the application of the Rule to the Trust would be impractical and unnecessarily burdensome, in view of the fact that holders of Initial Additional Shares are not holders of the Prior ETFs, Prior ETVs and the other Portfolio Holdings of an Initial Additional Fund. Given the nature of the Initial Additional Funds as FOF funds, Applicants believe that compliance with Rule 10b-17 would be impractical and would not solve any of the concerns that the rule was designed to address. This is because it is not possible for a Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. As an investment company, the Trust is required by the Internal Revenue Code to distribute at least 98% of its ordinary income and capital gains during the calendar year. If the Trust 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, mutual funds, including the Trust, 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 Trust to declare its 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 Trust to declare its dividend ten days in advance of the record date also would increase the chance that the Trust would over- or under-distribute capital gains. Unlike ordinary income, the Trust does not have the problem of estimating the aggregate amount of capital gains it will earn between declaration date and yearend, but as noted above, requiring the Trust to declare its dividend ten days in advance of the record date would increase the chance that the Trust would mis-estimate the number of outstanding shares. This, in turn, would increase the chance that the Trust would mis-estimate the per share amount of capital gains it must distribute. In view of the foregoing, the Trust requests that the Commission, pursuant to paragraph (b) (2), exempt the Trust, its Initial Additional Funds and the Initial Additional Shares from the application of Rule 10b-17, as it did in the Prior Relief.

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

Applicants submit that none of these concerns sought to be addressed by the Commission in Rule 10b- 17 will be implicated if the requested relief is granted. As set forth above, each Initial Additional 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 Initial Additional 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.

## **B. RULE 101 OF REGULATION M**

Applicants respectfully request that the Commission grant an exemption from Rule 101 of Regulation M, as discussed below, to permit persons participating in a distribution of Initial Additional Shares of an Initial Additional Fund to bid for or purchase, redeem or engage in other secondary market transactions in such shares.

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exemptions, prohibits any "distribution participant" and "its affiliated purchasers" from bidding for, purchasing from, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of Rule 101 apply to underwriters and prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in such distribution.

Applicants understand that while broker-dealers who (i) tender the Creation Basket for an Initial Additional Fund to the Trust through the Distributor in return for Creation Unit(s) or (ii) redeem Creation Units for receipt of the Redemption Basket (which is usually the same as the Creation Basket) generally will not be part of a syndicate or selling group, and while no broker-dealer will receive fees, commissions or other remuneration from the Trust or the Advisor for the sale of Creation Units, under certain circumstances such broker-dealers could be deemed to be "underwriters" or "distribution participants" as such terms are defined in Rule 100(b).

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, individual Additional Shares of Additional Funds are not redeemable except in Creation Units. Due to the redeemability of such Additional Shares in Creation Units, there should be little disparity between the Additional 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 Additional Shares of Additional Funds. Although redemption is subject to the condition of tendering the appropriate number of Additional Shares of Creation Units, the Trust otherwise will continue to function as an open-end fund continuously offering its Additional 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, Applicants request 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 its Additional Shares in Creation Units, transactions in the Additional Shares of Additional Funds would be exempted from Rule 101 on the basis of the exception contained in (c) (4) of such Rule.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Creation Units of Initial Additional Shares of Initial Additional Funds may be created and redeemed, primarily "In-Kind" (or in cash in certain cases) at NAV, on any business

day; holders of such Initial Additional Shares also have the benefit of intra-day secondary market liquidity by virtue of their Exchange listing. Thus, the secondary market price of an Initial Additional Fund's Shares should not vary substantially from the NAV of such shares. Given the redeemability of Initial Additional Shares in Creation Units, coupled with the open-end nature of the Trust, any significant disparity between the market price of the Initial Additional Shares and their NAV should be eliminated by this arbitrage activity. Due to the fact that the NAV of an Initial Additional Fund's Shares is largely based on the market value of such Initial Additional Fund's Portfolio Holdings, transactions involving Initial Additional Shares (creations from and redemptions with the Trust, as well as purchases and sales in the secondary market) will not affect NAV. Similarly, such transactions should not have a significant effect on the market price of an Initial Additional Fund's Shares.

Applicants also respectfully request 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 Initial Additional Shares of any Initial Additional Fund or shares of any components of an Initial Additional Fund's Creation Basket (i) to purchase a Creation Basket for the purpose of tendering it to such Initial Additional Fund as part of a Creation Deposit, for the purchase of Creation Units of Shares of such Initial Additional Fund and (ii) to tender Shares of such Initial Additional Fund for redemption in Creation Units and to receive a Redemption Basket as part of redemption proceeds.

Applicants request that the Commission clarify that the tender of the Initial Additional Shares of any Initial Additional Fund to such Initial Additional Fund for redemption and the receipt of some or all of the components of a Redemption Basket upon redemption does not constitute a bid for or purchase of any of such securities, or an "attempt to induce any person to bid for or purchase a covered security, during the applicable restricted period" for the purposes of Rule 101. Redemption entails no separate bid for any of the components of a Redemption Basket. As described above, following notice of redemption, an Initial Additional Fund will deliver the specified components of a Redemption Basket after the redemption request is received in proper form, except in those cases where redemption proceeds are paid in cash. Absent unusual circumstances, the Trust will not purchase such Redemption Basket in the secondary market to fulfill a redemption request. Therefore, redemptions of Initial Additional Fund Shares cannot be expected to affect the market price of the Redemption Basket. As indicated above, the Distributor will not engage in any secondary market transactions in Initial Additional Fund Shares, either for its own account or for investors.

In addition, Applicants believe that the purchase of a Creation Basket occurring when a creator is engaged in a distribution with respect to the components of such Creation Basket, made for the purpose of acquiring a Creation Unit of Initial Additional Shares, should be exempted from Rule 101. The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Applicants state that there is no ability to manipulate the price of one or more Index Constituents by executing Creation Unit transactions, for several reasons. As mentioned above, no Initial Additional Fund will hold in excess of 3% of the outstanding shares of any Underlying ETF that is an Index Constituent of such Initial Additional Fund's FOF Index, and may hold considerably less than such amount.<sup>31</sup> In addition, the liquidity requirements

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<sup>31</sup> In order for any FOF Fund to comply with the requirements of Section 12(1)(d)(1)(A) of the 1940 Act and in accordance with the agreements with Authorized Participants, it, together with all of its affiliated

that are part of the Process' selection parameters ensure that only large ETFs will become Index Constituents of such Initial Additional Fund's Index. It is difficult to imagine that a creator could effectively manipulate the price of shares of any Underlying ETF by engaging in Creation Unit transactions involving a position far smaller than 3% of such ETF's total outstanding shares. Applicants also note that the Underlying Prior ETFs that are Index Constituents of each Initial Additional Index are themselves index funds that are either subject to the ETF Class Relief or have received individual relief from the application of Rule 101, and in all cases are subject to the arbitrage mechanism inherent in the ETF structure. Given that the Prior ETFs have successfully argued that the risk of price manipulation in their single tier Index ETFs is unlikely, Applicants believe the same result is even more unlikely in an Initial Additional Fund comprised of such single tier ETFs. Therefore, Applicants state that there is no ability to manipulate the price of one or more Index Constituents by entering into Creation Unit transactions. Even assuming, for the purposes of discussion, that a creator managed to engage in price manipulation via Creation Units transactions, for the reasons discussed above, Applicants note that aberrations in the price should be readily detected by the marketplace and corrected by arbitrage activity when detected, thus eliminating the need for the limitations contained in Rule 101.

For all these reasons, therefore, Applicants believe that the application of Rule 101 in this context would not further the anti-manipulative purposes underlying the Rule. In view of the inability to manipulate the price of one or more Index Constituents by creating Creation Units of Initial Additional Fund Shares, combined with a predictable lack of any meaningful potential for the issuance and the secondary market trading of such Shares to affect significantly Share pricing, Applicants believe that the application of Rule 101 to a broker-dealer or other person who may be participating in a distribution of Initial Additional Shares or an Index Constituent of an Initial Additional Fund's Creation Basket is unnecessary and inappropriate, and could unnecessarily hinder broker-dealers or other persons in their creation and redemption activities, in their day-to-day ordinary business of buying and selling securities and such shares and thus undermine the potential beneficial market effect of Initial Additional Share trading.

### **C. RULE 102 OF REGULATION M**

Applicants also respectfully request 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 Initial Additional Shares in Creation Units, for the reasons previously stated under the request for relief under Rule 101(c) (4), transactions in such shares would be exempted from Rule 102 on the basis of the exception contained in paragraph (d) (4) of such Rule. Applicants believe that the 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

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persons, including all other Funds, may not hold in excess of 3% of the total outstanding stock of such ETF. Applicants note, therefore, that although a single FOF Fund may hold up to 3%, it is likely to hold less than this maximum because 3% is an aggregate cap applicable to all Funds that hold shares of such ETF. Were more than one Initial Additional Fund to hold the shares of a particular Prior ETF, each such Fund would necessarily hold less than 3% of the outstanding shares of such Prior ETF.



that could artificially influence the market for that particular security. Applicants respectfully request that the Commission grant an exemption under paragraph (e) of Rule 102 to allow each of the Initial Additional Funds to redeem Initial Additional Shares in Creation Units during the continuous offering of such Shares. Applicants submit that the redemptions described in this letter do not constitute a manipulative or deceptive practice within the purpose of Rule 102 and are eligible for an exemption from the provisions of Rule 102 to allow each of the Initial Additional Funds to redeem their Initial Additional Shares in Creation Units during the continuous offering of such shares as was granted by the Commission in the Prior Relief.

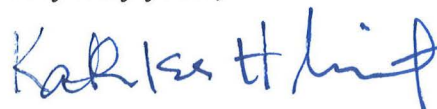
For the reasons described above in connection with the requested Rule 101 relief, redemption transactions and secondary market transactions in the Initial Additional Shares of Initial Additional Funds cannot be used to manipulate the price of one or more components of a Redemption Basket during a distribution of such components. The Trust will redeem the Creation Units of Initial Additional Shares at the NAV of such shares. Although Shares of Initial Additional Funds are traded on the secondary market, such Initial Additional Shares may only be redeemed in Creation Units. Thus, Applicants believe that the redemption by of the Initial Additional Shares of each of the FOF Initial Additional Funds at NAV in consideration principally for components of a Redemption Basket does not involve the abuses that Rule 102 was intended to prevent.

#### PART VI

Based on the foregoing, Applicants respectfully request that the Commission and the Division grant the relief requested herein. The forms of relief requested are identical to those granted in the Prior Relief and are virtually identical to those actions which the Commission and the Division of Trading and Markets have taken in similar circumstances.

Thank you for your consideration of this request. The Trust intends to launch the trading of the Initial Additional Shares of the Initial Additional Funds on May 2, 2016 or as soon as practicable after the appropriate regulatory relief has been obtained. In light of this schedule and given the ample precedent for the requested relief, Applicants are hopeful that the requests contained herein will be handled expeditiously. Should you have any questions or require additional information, please do not hesitate to call the undersigned at (212) 836-8276.

Very truly yours,



Kathleen H. Moriarty

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cc: Bradley Gude, Esq.  
Division of Trading and Markets