Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an
inappropriate advantage.

11. No board member or officer of a
Sub-Advised Series, or director,
manager, or officer of the Adviser, will
own directly or indirectly (other than
through a pooled investment vehicle
that is not controlled by such person),
y any interest in a Sub-Adviser, except for
(i) ownership of interests in the Adviser
or any entity, except a Wholly-Owned
Sub-Adviser, that controls, is controlled
by, or is under common control with the
Adviser; or (ii) ownership of less than
1% of the outstanding securities of any
class of equity or debt of a publicly
traded company that is either a Sub-
Adviser or an entity that controls, is
controlled by, or is under common
control with a Sub-Adviser.

12. Each Sub-Advised Series will
disclose the Aggregate Fee Disclosure in
its registration statement.

13. In the event the Commission
adopts a rule under the Act providing
substantially similar relief to that
requested in the application, the
requested order will expire on the
effective date of that rule.

For the Commission, by the Division of
Investment Management, under delegated
authority.

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2013–15841 Filed 7–1–13; 8:45 am]
BILLING CODE 8011–01–P

SEcurities AND EXCHANGE
COMMISSION

30568; 812–14080]

ETF Issuer Solutions Inc., et al.; Notice
of Application

June 26, 2013.

AGENCY: Securities and Exchange
Commission (“Commission”).

ACTION: Notice of an application for an
order under section 6(c) of the
Investment Company Act of 1940
(“Act”) for an exemption from sections
2(a)(32), 5(a)(1), 22(d) and 22(e) of the
Act and rule 22c–1 under the Act, under
sections 6(c) and 17(b) of the Act for an
exemption from sections 17(a)(1) and
(a)(2) of the Act, and under section
12(d)(1)(J) of the Act for an exemption
from sections 12(d)(1)(A) and (B) of the
Act.

APPLICANTS: ETF Issuer Solutions Inc.
(“ETFis”), ETF Actively Managed Trust
(“Trust”) and ETF Distributors LLC
(“Distributor”).

SUMMARY OF APPLICATION: Applicants
request an order that permits: (a)
Actively-managed series of certain
open-end management investment
companies to issue shares (“Shares”)
redeemable in large aggregations only
(“Creation Units”); (b) secondary market
transactions in Shares to occur at
negotiated market prices; (c) certain
series to pay redemption proceeds,
under certain circumstances, more than
seven days from the tender of Shares for
redemption; (d) certain affiliated
persons of the series to deposit
securities into, and receive securities
from, the series in connection with the
purchase and redemption of Creation
Units; and (e) certain registered
management investment companies and
unit investment trusts outside of the
same group of investment companies as
the series to acquire Shares.

FILING DATES: The application was filed
on September 28, 2012, and amended
on March 8, 2013 and June 19, 2013.

HEARING OR NOTIFICATION OF HEARING:
An order granting the requested relief will
be issued unless the Commission orders
a hearing. Interested persons may
request a hearing by calling the
Commission’s Secretary and serving
applicants with a copy of the request,
personally or by mail. Hearing requests
should be received by the Commission
by 5:30 p.m. on July 22, 2013, and
should be accompanied by proof of
service on applicants, in the form of an
affidavit or, for lawyers, a certificate of
service. Hearing requests should state
the nature of the writer’s interest, the
reason for the request, and the issues
contested. Persons who wish to be
notified of a hearing may request
notification by writing to the
Commission’s Secretary.

ADDRESS: Elizabeth M. Murphy,
Secretary, U.S. Securities and Exchange
Commission, 100 F Street NE.,
Washington, DC 20549–1900.
Applicants, 501 Madison Avenue, Suite
501, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT:
David J. Marcinkus, Attorney-Advisor,
at (202) 551–6882 or Dalia Blass,
Assistant Director, at (202) 551–6821
(Division of Investment Management,
Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The
following is a summary of the
application. The complete application
may be obtained via the Commission’s
Web site by searching for the file
number, or an applicant using the
Company name box, at http://
www.sec.gov/search/search.htm or by
calling (202) 551–8090.

Applicants’ Representations

1. The Trust is a statutory trust
organized under the laws of the State of
Delaware, and will be registered with
the Commission as an open-end
management investment company. The
Trust will initially offer one actively-
managed investment series (the “Initial
Fund”). Applicants currently intend to
name the Initial Fund the Manna U.S.
Equity Enhanced Dividend Income
Fund.

2.ETFis, a Delaware corporation, will
serve as investment adviser to the Initial
Fund. An Advisor (as defined below)
may enter into sub-advisory agreements
with investment advisers to act as sub-
advisers (each a “Subadvisor”) with
respect to the Funds (as defined below).
Each Advisor will be registered as an
“investment adviser” under the
Investment Advisers Act of 1940
(“Advisers Act”). Any Subadvisor will
be registered under the Advisers Act, or
not subject to registration. The
Distributor, a Delaware limited liability
company, serves as the principal
underwriter and distributor for each of
the Funds. The Distributor is currently
in the process of registering as a broker-
dealer under the Securities Exchange
Act of 1934 (“Exchange Act”), and
neither the Trust nor the Initial Fund
will commence operations prior to the
Distributor becoming registered. The
Distributor is an affiliated person of
ETFis within the meaning of Section
2(a)(3)(C) of the Act.1

3. Applicants request that the order
apply to the Initial Fund and any future
series of the Trust or of any other open-
end management companies or series
thereof that utilizes active management
investment strategies (“Future Funds”).
Any Future Fund will (a) be advised by
ETFis or an entity controlling,
controlled by, or under common control
with ETFis (each, an “Advisor”), and (b)
comply with the terms and conditions
of the application.2 The Initial Fund and
Future Funds together are the “Funds.”
Each Fund will consist of a portfolio of
securities (including fixed income
securities and/or equity securities),
currencies, assets and other positions
(“Portfolio Instruments”). If a Fund
invests in derivatives, then (i) the

1. Applicants request that the order also apply to
any other future principal underwriter and
distributor to Future Funds (each, a “Future
Distributor”), provided that any such Future
Distributor complies with the terms and
conditions of the application.

2. All entities that currently intend to rely on the
order are named as applicants. Any other entity that
relies on the order in the future will comply with
the terms and conditions of the application. An
Investing Fund (as defined below) may rely on the
order only to invest in Funds and not in any other
registered investment company.
Fund’s board of directors or trustees (“Board”) will periodically review and approve the Fund’s use of derivatives and how the Advisor assesses and manages risk with respect to the Fund’s use of derivatives and (ii) the Fund’s disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance. Funds may invest in “Depositary Receipts.” A Fund will not invest in any Depositary Receipt that the Advisor or Subadvisor, as applicable, deems to be illiquid or for which pricing information is not readily available. Each Fund will operate as an actively managed exchange-traded fund (“ETF”). The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.\(^4\)

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) (the “Section 12(d)(1) Relief”) apply to: (i) Any Fund that is currently or subsequently part of the same “group of investment companies” as an Initial Fund as defined in section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same “group of investment companies” as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund such management investment companies, “Investing Management Companies,” such unit investment trusts, “Investing Trusts,” and Investing Management Companies and Investing Trusts together, “Investing Funds”). Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (“Authorized Participant”) with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (A) a broker or dealer registered under the Exchange Act (“Broker”) or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (the “NSCC”), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (B) a participant in the DTC (such participant, “DTC Participant”). The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”). On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the “Creation Basket.” In addition, the Creation Basket will correspond pro rata to the positions in a Fund’s portfolio (including cash positions), except (a) in the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; or (c) TBA Transactions, short positions and other positions that cannot be transferred in kind \(^{10}\) will be excluded from the Creation Basket.\(^{11}\) If there is a difference between the net asset value (“NAV”) attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;\(^{12}\) (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because (i) such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (“Global Funds”), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not

\(^{3}\) Depositary Receipts are typically issued by a financial institution, a “depository”, and evidence ownership in a pool of securities that have been deposited with the depository. No affiliated persons of the Trust or a Fund, Distributor, Advisor or any Subadvisor will serve as the depository bank for any Depositary Receipts held by a Fund.

\(^{4}\) In no case will a Fund that invests in other open-end and/or closed-end investment companies and/or ETFs in excess of the limits in Section 12(d)(1)(A) rely on the Section 12(d)(1) Relief.

\(^{5}\) The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (“Securities Act”). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

\(^{6}\) Each Fund will sell and redeem Creation Units on each “Business Day,” which is defined to include any day that the Trust is open for business as required by Section 22(e) of the Act.

\(^{7}\) The portfolio used for this purpose will be the same portfolio used to calculate the Fund’s NAV for that Business Day.

\(^{8}\) A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

\(^{9}\) A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

\(^{10}\) This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

\(^{11}\) Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (as defined below).

\(^{12}\) In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. Purchases of Creation Units either on a cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.
available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind. 7.

Each Business Day, before the open of trading on a national securities exchange as defined in section 2(a)(26) of the Act ("Stock Exchange"), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. A Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

8. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units. All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant, and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus ("Prospectus") to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on a Stock Exchange. Applicants expect that one or more Stock Exchange specialists ("Specialists") or market makers ("Market Makers") will be assigned to make a market in Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that there will be several categories of market participants who are likely to be interested in purchasing Creation Units. One is arbitrageurs, who stand ready to take advantage of any slight premium or discount in the market price of Shares on the Stock Exchange versus the cost of depositing a Creation Deposit and creating a Creation Unit to be broken down into individual Shares. Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV. Applicants also expect that Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, will purchase Creation Units for use in their own market making activities.

11. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Basket. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

13. The Funds’ Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including on a per Share basis for each Fund, the prior Business Day’s NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including any short positions) that will form the basis for the Fund’s calculation of NAV at the end of the Business Day.

14. Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

15. A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis (i.e., where Section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

16. Shares are listed on a Stock Exchange such as the NYSE, or in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

17. Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day’s (“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.
section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policies of each registered investment company concerned and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer’s current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act.

Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been made aware that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction, up to a maximum of 15 calendar days, in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed, and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company’s voting stock, or if the sale will cause more than 10% of the acquired company’s voting stock to be owned by investment companies generally.

18 Applicants state that, in the past, settlement in certain countries, including Russia, have extended to 15 calendar days.
10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (“Investing Fund Advisor”), sponsor of an Investing Trust (“Sponsor”), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (“Investing Fund’s Advisory Group”) from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (“Investing Fund Subadvisor”), any person controlling, controlled by or under common control with the Investing Fund Subadvisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Subadvisor or any person controlling, controlled by or under common control with the Investing Fund Subadvisor (“Investing Fund’s Subadvisory Group”).

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate19 (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (“Affiliated Underwriting”). An “Underwriting Affiliate” is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the Board of any Investing Management Company, including a majority of the directors or trustees who are not “interested persons” within the meaning of section 2(a)(19) of the Act (“disinterested directors or trustees”), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.20

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into a Participation Agreement with the respective Funds (“FOF Participation Agreement”). The FOF Participation Agreement will include an

19 An “Investing Fund Affiliate” is any Investing Fund Advisor, Investing Fund Subadvisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. “Fund Affiliate” is the investment adviser(s), promoter or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

20 Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (“second tier affiliate”), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines “affiliated person” to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines “control” as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person’s voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an “Affiliated Fund”).

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.21 Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are an affiliated person or a second tier affiliate.22
The FOF Participation Agreement also will include a sale by the Fund of its Shares to an Investing Fund, or an affiliated person of such person, for the purchase of the Shares of the Fund or (b) an affiliated person of a person, for the purchase by the Investing Fund of the Funds. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund’s registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants’ Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between and Investing Fund and a Fund, relief from section 17(a) would be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that would accompany such sales and redemptions.

2. The members of the Investing Fund’s Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. The members of the Investing Fund’s Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund’s Advisory Group or the Investing Fund’s Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Investing Fund’s Subadvisory Group with respect to a Fund for which the Investing Fund Subadvisor or a person controlling, controlled by or under common control with the Investing Fund Subadvisor acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

3. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

4. The board of directors or trustees of an Investigating Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Subadvisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

5. Once an investment by an Investing Fund in Shares exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions; (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

6. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under Rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund in connection with the investment by the Investing Fund in
the Fund. Any Investing Fund Subadvisor will waive fees otherwise payable to the Investing Fund Subadvisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadvisor, or an affiliated person of the Investing Fund Subadvisor, other than any advisory fees paid to the Investing Fund Subadvisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadvisor. In the event that the Investing Fund Subadvisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate’s members, the terms of the purchase, and the information or materials upon which the Board’s determinations were made.

9. Before investing in Shares in excess of the limits in Section 12(d)(1)(A), each Investing Fund and the Fund will execute an FOF Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in Section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the 12(d)(1) Relief will acquire securities of any investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O’Neill,
Deputy Secretary.

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