



DIVISION OF  
TRADING AND MARKETS

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

July 1, 2008

Richard F. Kadlick  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036

Re: **MACRO Securities Depositor, LLC**  
**File No. TP 08-58**

Dear Mr. Kadlick:

In your letter dated July 1, 2008, as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), you request on behalf of MACRO Securities Depositor, LLC (the "Depositor") on its own behalf as well as on behalf of (1) MacroShares \$100 Oil Up Trust (the "Up Trust") and MacroShares \$100 Oil Down Trust (the "Down Trust") (collectively "the Trusts"), both of which are New York trusts created by the Depositor and are passive, unmanaged investment vehicles, (2) the American Stock Exchange ("AMEX") and any other national securities exchange or association on or through which shares of the Trusts ("Shares") may subsequently trade, and (3) persons or entities engaging in transactions in Shares, no-action relief from Rules 101 and 102 of Regulation M, Rule 10b-10 and Rule 10b-17 under the Securities Exchange Act of 1934 ("Exchange Act"), and Section 11(d)(1) of the Exchange Act and Rule 11d1-2 thereunder, in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as discussed in your letter. This response is attached to the enclosed photocopy of your correspondence. Each defined term in this letter has the same meaning as defined in your letter, unless otherwise noted herein.

*Response:*

With respect to the activity described in your letter, the Staff will not recommend to the Securities and Exchange Commission ("Commission") enforcement action in the following circumstances.

*Rule 101 of Regulation M*

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of a distribution until after the applicable

restricted period, except as specifically permitted in the Regulation. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities, and affiliated purchasers of such persons.

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Trusts will continuously redeem Shares in Creation Unit aggregations at their Proportionate Underlying Value and that the secondary market price of Shares should not vary substantially from their Proportionate Underlying Value per Share, the Staff will not recommend enforcement action to the Commission if persons who may be deemed to be participating in a distribution of Shares redeem or otherwise engage in other secondary market transactions in such Shares during their participation in the distribution as represented in your letter.

*Rule 102 of Regulation M*

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Trusts will continuously redeem Shares in Creation Unit aggregations at their Proportionate Underlying Value and that the secondary market price of Shares should not vary substantially from their Proportionate Underlying Value per Share, the Staff will not recommend enforcement action to the Commission if the Trusts effect, and any authorized participant directs, redemptions of Shares as represented in your letter.

*Rule 10b-17*

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution, stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b).

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that it is not possible for the Distributor to accurately project ten days in advance what dividend, if any, would be paid on a particular record date making compliance with Rule 10b-17 impractical, the Staff

will not recommend enforcement action to the Commission if the Depositor is unable to provide the 10 day notice required by Rule 10b-17.

*Section 11(d)(1) and Rules 10b-10 and 11d1-2*

As we discussed,<sup>1</sup> we are treating your request for relief as a request that the Staff confirm that it will not recommend enforcement action to the Commission if a broker-dealer treats Shares, for purposes of the relief from Section 11(d)(1) and Rules 10b-10 and 11d1-2 provided in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) ("Class Relief Letter"), as shares of a Qualifying ETF (as defined in the Class Relief Letter).

Based on the facts and representations set forth in your letter, in particular, the nature of the assets in the Trusts, and without necessarily concurring in your analysis, the Staff will not recommend enforcement action to the Commission if a broker-dealer treats Shares, for purposes of the relief from Section 11(d)(1) of the Exchange Act, and Rules 10b-10 and 11d1-2 thereunder, provided in the Class Relief Letter, as shares of a Qualifying ETF. Accordingly, with respect to the Shares, to the extent that a broker-dealer satisfies the other conditions in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

The foregoing no-action positions taken under Rules 101 and 102 of Regulation M, Rule 10b-10, Rule 10b-17, and Section 11(d)(1) of the Exchange Act and Rule 11d1-2 are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to transactions involving Shares under the circumstances described above and in your letter. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action positions taken under Rules 101 and 102 of Regulation M and Rule 10b-17 under the Exchange Act are subject to the condition that such transactions in Shares or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

The foregoing no-action positions are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these no-action positions. The Staff expresses no view with respect to other questions that the proposed transactions may

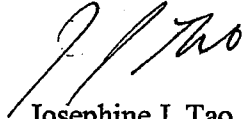
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<sup>1</sup> Telephone conversation between Matthew A. Daigler, Division of Trading and Markets, Commission, and Eva Valik, Esq., June 26, 2008.

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raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal or state laws or rules or regulations of any self-regulatory organizations to, the proposed transactions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. J. Tao", written in a cursive style.

Josephine J. Tao  
Assistant Director

Attachment

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July 1, 2008

VIA EXPRESS MAIL AND ELECTRONIC MAIL

Ms. Josephine Tao  
Assistant Director  
Division of Trading and Markets  
Securities and Exchange Commission  
One Station Place  
100 F Street, N.E.  
Washington, D.C. 20549-1001

RE: Request of MACRO Securities Depositor, LLC for No-Action Relief from Rule 101 and 102 of Regulation M, Rule 10b-10 and Rule 10b-17 promulgated, in each case, under the Securities Exchange Act of 1934 (the "Exchange Act"), and Section 11(d)(1) of the Exchange Act and Rule 11d1-2 promulgated thereunder

Dear Ms. Tao:

We are writing to you on behalf of MACRO Securities Depositor, LLC (the "Depositor"). The Depositor, on behalf of itself as well as on behalf of the MacroShares \$100 Oil Up Trust (the "Up Trust"), the MacroShares \$100 Oil Down Trust (the "Down Trust"), the American Stock Exchange (the "AMEX") and any other national securities exchange or national securities association on or through which the shares of the Up Trust or Down Trust (generically, the "MacroShares"), may subsequently trade (each such organization, a "Market") and persons and entities engaging in transactions in the MacroShares, wishes respectfully to request no-action relief from Rule 101 and 102 of Regulation M, Rule 10b-10 and Rule 10b-17 promulgated, in each case, under the Exchange Act, and Section 11(d)(1) of the Exchange Act, together with Rule 11d1-2 promulgated thereunder.

This letter is divided into three parts. Part I is a summary of the transaction in which the MacroShares will be issued. Part II describes certain economic characteristics of the MacroShares structure. Part III contains the request for relief.

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## Part I: SUMMARY OF THE MACROSHARES STRUCTURE

### The Macro Trusts

The Depositor has created two separate trusts under New York law: the "Up Trust" and the "Down Trust." We refer to the two trusts collectively as the "Paired Trusts," and each of them, generically, as a "Macro Trust." The Up Trust will issue the MacroShares \$100 Up Shares (the "Up MacroShares") and the Down Trust will issue the MacroShares \$100 Down Shares (the "Down MacroShares"). We refer to the Up MacroShares and the Down MacroShares, collectively, as the "Paired Shares," and, to Up MacroShares and/or Down MacroShares, generically, as "MacroShares." Each MacroShare issued by a Macro Trust will represent an undivided beneficial ownership interest in the assets of that trust. The Up MacroShares have been registered under the Securities Act of 1933 (the "Securities Act") with the Securities and Exchange Commission (the "Commission") pursuant to Amendment No. 1 to the registration statement on Form S-1, file no. 333-150282, and the Down MacroShares have been registered under the Securities Act with the Commission pursuant to Amendment No. 1 to the registration statement on Form S-1, file no. 333-150283.

The Up MacroShares are listed on the AMEX under the symbol "UOY," and the Down MacroShares are listed on the AMEX under the symbol "DOY." The AMEX, on behalf of the Macro Trusts, made an application to the Commission pursuant to Rule 19b-4 of the Exchange Act to allow for the trading of the MacroShares. Such application was approved on June 27, 2008.

Each of the Paired Trusts was formed pursuant to a trust agreement among the Depositor, State Street Bank and Trust Company, N.A., acting in the capacity of a "trustee," MacroMarkets LLC, acting in the capacity of an "administrative agent," and MACRO Financial LLC, acting in the capacity of a "marketing agent." MacroMarkets LLC is a limited liability company formed under the laws of the State of Delaware. Its primary business is the structuring and administration of financial products which reference the value of various commodity indices, housing price indices and macroeconomic variables and which employ the patented MacroShares structure. MACRO Financial LLC is a registered broker dealer and an affiliate of MacroMarkets LLC. The trustee, acting at the direction of the administrative agent, (i) invests all of the proceeds of each issuance of Paired Shares in bills, notes and bonds guaranteed by the government of the United States (generically, "Treasuries"), which mature prior to each quarterly distribution date, and in overnight repurchase agreements fully collateralized by Treasuries ("Treasury Repos") and, together with Treasuries, "Eligible Investments"), and (ii) reinvests the proceeds received by each of the Paired Trusts (other than interest income, which is distributed quarterly to shareholders, as described herein) upon the maturity of its Eligible Investments in new Eligible Investments.

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### How the MacroShares Transaction Works

The Paired Shares may only be created and redeemed by authorized participants<sup>1</sup> in one or more "MacroShares Units" each of which consists of 50,000 Up MacroShares and 50,000 Down MacroShares. Each MacroShares Unit represents an aggregation of MacroShares constituting the "Creation Unit" in which MacroShares may be created and redeemed. In connection with the issuance of each Creation Unit, the Paired Trusts will enter into a settlement contract pursuant to which one of the trusts will be obligated to make a payment to the other trust upon the redemption of the related Creation Unit. If the Applicable Reference Price of Crude Oil<sup>2</sup> on the date when the settlement contract is terminated in connection with a redemption of the MacroShares is higher than such Applicable Reference Price of Crude Oil on the closing date,<sup>3</sup> the Down Trust will be required to make a payment to the Up Trust. Conversely, if the Applicable Reference Price of Crude Oil on the date of settlement is less than on the closing date, the Up Trust will be required to make a payment to the Down Trust. The purpose of the payment required to be made under the settlement contracts is to ensure that each of the Paired Trusts holds assets equal to the Proportionate Underlying Value (as defined below) of the shares being redeemed. After making or receiving a settlement payment under the settlement contracts, the Paired Trusts will deliver cash and/or treasuries in an amount equal to such Proportionate Underlying Value as a final distribution to the holders of the shares being redeemed.

On any price determination day,<sup>4</sup> the "Underlying Value" of each of the Paired Trusts will be calculated using that day's Applicable Reference Price of Crude Oil, as defined in footnote 2 below. The Underlying Value of a Macro Trust on any price determination day will represent the share of the aggregate amount of assets on deposit in both that Macro Trust and its Paired Trust to which the shareholders of that Macro Trust would be entitled if the settlement contracts were settled on that day. The "Proportionate Underlying Value" of each MacroShare on any price determination day will be equal to its share of the Underlying Value of its Macro Trust.

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<sup>1</sup> An "authorized participant" is any entity that (1) is a registered broker-dealer and a member in good standing with the Financial Industry Regulatory Authority ("FINRA"), or a participant in the securities markets such as a bank or other financial institution that is not required to register as a broker-dealer or be a member of FINRA in order to engage in securities transactions; (2) is a participant in DTC or has indirect access to the clearing facilities of DTC by virtue of a custodial relationship with a DTC participant; and (3) has entered into a "Participants Agreement" with the Depositor, the Trustee and the Administrative Agent. The status of each authorized participant for the paired holding trusts as a principal underwriter for each such trust will be determined in accordance with the definition of 'statutory underwriter' contained in Section 2(a)(29) of the 1940 Act.

<sup>2</sup> The "Applicable Reference Price of Crude Oil" is the settlement price of the Light Sweet Crude Oil Futures Contract, as calculated and reported by the New York Mercantile Exchange, Inc. ("NYMEX") on a per barrel basis in U.S. dollars at the end of each price determination day based upon the trading that has occurred in that contract by open outcry and that has been published to the consolidated tape or publicly disseminated. If NYMEX abandons its open outcry format for the Light Sweet Crude Oil Futures Contract, the Applicable Reference Price of Crude Oil will be based on trading of the Light Sweet Crude Oil Futures Contract on the substitute electronic trading platform calculated by NYMEX, and, in the event that the NYMEX License has been terminated by NYMEX and MacroMarkets LLC and the Depositor have successfully negotiated a license with a Substitute Oil Price Provider, the Applicable Reference Price of Crude Oil will be based on the settlement price for the Substitute Reference Oil Price that is calculated for each price determination day, as provided in such license.

<sup>3</sup> The closing date is the date on which the first issuance of Paired Macroshares is made by the Paired Trusts.

<sup>4</sup> A price determination day is any day on which light sweet crude oil futures contracts trade by open outcry on the NYMEX and a settlement price is determined for such contracts in accordance with the rules of the NYMEX.

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The Paired Trusts will also make quarterly distributions of income earned on their Eligible Investments, net of their respective fees and expenses, to the holders of the MacroShares. The entitlement of each Macro Trust to investment "income" (if any) realized on the Eligible Investments on deposit in both of the Paired Trusts will be calculated for each day under the terms of an income distribution agreement entered into by the Paired Trusts. Such entitlement will be based on the Applicable Reference Price of Crude Oil on the day of measurement and is referred to as each trust's "earned income accrual." On each distribution date, the required payment under the income distribution agreement will be calculated as the net of the entitlements and liabilities that have accrued during each day of the preceding calculation period for each Macro Trust. This payment will be made by the trust that has a net liability under the income distribution agreement out of the net income realized by such trust as of such distribution date. After each Macro Trust has made or received a payment under the income distribution agreement on each distribution payment date, it will distribute, on such date, its aggregate available income to its shareholders as a quarterly distribution.

#### Form of the MacroShares

The MacroShares were issued in the form of one or more global certificates registered in the name of Cede & Co., as the nominee of DTC, and deposited with DTC in the United States or with Clearstream Banking, société anonyme or Euroclear Bank S.A./NV in Europe. Shareholders will not receive a physical certificate and will not be considered to be the registered holders of the global certificates representing the MacroShares. Instead, DTC or its nominee will be recognized as the record owner of the MacroShares for all purposes.

Under existing industry practice, in the event the Depositor or the trustee requests any action by beneficial owners with respect to any MacroShare, DTC will enable its participants to take such action and its participants will enable the indirect participants and beneficial owners of such MacroShares to take such action through the DTC participants. Furthermore, if a beneficial owner desires to take any action that DTC, as the record owner of all outstanding MacroShares, is entitled to take, DTC's participants will otherwise act upon the instructions of the indirect participants and the beneficial owners.

Accordingly, to exercise its rights as a shareholder, each beneficial owner of MacroShares must rely upon the procedures of DTC as well as those of DTC participants and any broker, dealer, bank, trust company or other party that clears through or maintains a custodial relationship, either directly or indirectly, with the DTC participant through which such beneficial owner holds its interest. Moreover, because each Macro Trust's records will reflect that its shares are held by DTC, the trustee will furnish, based on information provided by DTC, the required materials to the DTC participants which, in turn, will be responsible for distributing them to the beneficial owners.

#### Paired Optional Redemptions of MacroShares

The Up MacroShares and Down MacroShares may be redeemed in one or more Creation Units on any price determination day at the direction of authorized participants. Such redemptions are referred to as "Paired Optional Redemptions." All outstanding MacroShares will be automatically redeemed on the final scheduled termination date scheduled to occur in December of 2013 or on the early termination date that will follow the occurrence of certain "termination triggers," such as a change in the legal status of the Macro Trusts for purposes of the federal securities laws, the failure, for five (5) consecutive business days, of NYMEX or a substitute oil provider to calculate the Applicable Reference Price of Crude Oil, or a decrease in the Applicable Reference Price of Crude Oil to or below \$15 or an increase in that price to or above \$185, at which points the Underlying Value of the Up Trust or the Down



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Trust, as applicable, will be equal to approximately 15% or less of the aggregate assets on deposit in such trust.

In connection with a Paired Optional Redemption, one or more settlement contracts will be settled and the notional amount of the income distribution agreement will be reduced accordingly.<sup>5</sup> On the relevant Redemption Date (as defined below), the redeeming authorized participants will receive a final distribution equal to the Proportionate Underlying Value of the Up MacroShares and the Proportionate Underlying Value of the Down MacroShares which were tendered for redemption.

Authorized participants must place redemption orders with the administrative agent on any price determination day (the "Redemption Order Date") not later than the time specified from time to time in the Participants Agreement (defined herein in footnote 1). On the business day following the Redemption Order Date or, in the event that the Redemption Order Date is a distribution date or the business day following the distribution date, on the third business day after the Redemption Order Date (the "Redemption Date"), the redeeming authorized participant must deliver to the trustee the requisite number of Up MacroShares and Down MacroShares constituting the number of Creation Units being redeemed and a transaction fee payable to the trustee, and the administrative agent must deliver to such authorized participant, cash and/or Eligible Investment in an amount equal to the Proportionate Underlying Value of the Up MacroShares and Down MacroShares being redeemed.

#### **Paired Issuances of MacroShares**

An order for the issuance of MacroShares in lots equal to one or more Creation Units may be placed on any price determination day at the direction of any existing or prospective shareholder who is an authorized participant and who delivers immediately available funds to the trustee in an amount equal to the Proportionate Underlying Value of the Up MacroShares being created and the Proportionate Underlying Value of the Down MacroShares being created. Such a creation of additional Paired Shares is referred to as a "Paired Issuance."

Authorized participants must deliver a creation order for Paired Shares on any price determination day (the "Issuance Order Date") prior to the time specified in the Participants Agreement. On the business day following the Issuance Order Date or, in the event that the Issuance Order Date is a distribution date or the business day following the distribution date, on the third business day after the Issuance Order Date (such date, the "Issuance Date"), the authorized participant must have delivered to the trustee immediately available funds in an amount equal to the aggregate Proportionate Underlying Value of the Up MacroShares and Down MacroShares being created plus a transaction fee payable to the trustee. Following receipt of such funds, the trustee will deliver to the authorized participant's account at DTC, on such Issuance Date, Up MacroShares and Down MacroShares representing the number of Creation Units that were issued. Acting at the direction of the administrative agent, the trustee will invest the funds delivered by the authorized participant in the Paired Issuance in Eligible Investments.

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<sup>5</sup> The notional amount of each settlement contract is equal to the aggregate par amount of Paired Shares in one Creation Unit. The combined notional amount of all of the settlement contracts entered into by the Paired Trusts at any time, as well as the notional amount of the income distribution agreement, will equal the aggregate amount of funds on deposit in such trusts, assuming that the trusts have not suffered any "losses" due to their expenses exceeding income on their Eligible Investments. The aggregate amount of funds on deposit in the Paired Trusts will always equal the aggregate par amount of all outstanding Paired Shares, unless, as described in the preceding sentence, either or both trusts' expenses exceed their income from Eligible Investments.

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We note that the process for effecting Paired Optional Redemptions and Paired Issuances will utilize portions of the DTC procedures established for exchange-traded funds ("ETFs").

#### **Dissemination of Information about the MacroShares**

In order to provide the most up-to-date pricing information to investors, market specialists and authorized participants wishing to direct a Paired Optional Redemption or a Paired Issuance of Creation Units, the Depositor has entered into a calculation agency agreement with the AMEX pursuant to which the AMEX will disseminate the trading price of the Up MacroShares and Down MacroShares by means of the consolidated tape, or on a designated page of the AMEX website located at [www.amex.com/amextrader](http://www.amex.com/amextrader) at the end of each business day: (i) every 15 seconds throughout the trading day, the bid/offer price for one Up MacroShare and one Down MacroShare, (ii) every 15 seconds throughout the trading day, the Proportionate Underlying Value of one Up MacroShare and one Down MacroShare, (iii) every 15 seconds throughout the trading day, the value of the NYMEX benchmark future contract divided by 4 (because the value of one such contract on the closing date was represented by 4 Up MacroShares) and (iv) the end of day premium or discount of the midpoint of the bid/offer for one Up MacroShare and one Down MacroShare over or to the respective Proportionate Underlying Value of such shares.

In addition, at the end of each business day, the administrative agent will publish on its website located at <http://www.macromarkets.com>, the end-of-day market price and the Proportionate Underlying Value of the Up MacroShares and Down MacroShares based on the current day's settlement price for the Applicable Reference Price of Crude Oil.

#### **The Passive Structure and Limited Activities of the Macro Trusts**

Each of the Macro Trusts is a passive, unmanaged investment vehicle which has no directors, officers or employees. Neither Macro Trust has an audit committee and each trust will rely on the audit committee established by the Depositor to comply with its reporting obligations under the Exchange Act. Each Macro Trust acts only through the trustee or the administrative agent as permitted under or directed by the applicable trust agreement. Each Macro Trust's business and activities are limited to: (i) issuing and redeeming MacroShares, (ii) entering into the income distribution agreement and the settlement contracts with its Paired Trust, and (iii) investing its funds in Eligible Investments pending application of such funds to effect redemptions.

MACRO Securities Depositor, LLC is a Delaware limited liability company which was organized to act as the depositor for the Macro Trusts. The Depositor is a wholly-owned subsidiary of MacroMarkets LLC, the owner of the patent on the MacroShares structure and the entity which will act as the administrative agent for the Macro Trusts. The Depositor has identified and engaged the trustee, the administrative agent, the marketing agents and other service providers for the Macro Trusts. The actions that may be or are required to be taken by the service providers will be governed by the terms of the trust agreement for each trust. The Depositor has designated independent registered public accountants as auditors of each Macro Trust and may from time to time employ legal counsel for the trusts. None of the Depositor, MacroMarkets LLC, the trustee or any of their respective affiliates or any other person will manage or exercise any control over the activities of the Macro Trusts, which will be governed wholly by terms of their respective trust agreements.

State Street Bank and Trust Company, N.A. will act as a trustee for both of the Macro Trusts. The trustee will generally be responsible for the day-to-day administration of the Macro Trusts in

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accordance with the terms of the respective trust agreement for each trust. The trustee's principal responsibilities include (i) effecting Paired Optional Redemptions and Paired Issuances of MacroShares in accordance with the directions of the administrative agent, (ii) causing the Paired Trusts to make their required payments under the income distribution agreement and the settlement contracts, (iii) causing the Paired Trusts to make quarterly income distributions and final distributions to their shareholders, (iv) administering each of the trusts, (v) paying the fees and expenses of each trust out of available funds, (vi) settling purchase orders for Eligible Investments that were placed by the administrative agent, and (vii) performing various calculations, including the calculation of the component variables of Underlying Value (e.g., the amount of cash and treasuries on deposit in each of the Paired Trusts).

The duties of the administrative agent will include, among other things, (i) investing the funds on deposit in the Macro Trusts and delivered to each trust in Paired Issuances by placing purchase orders for Eligible Investments in accordance with the acquisition guidelines set forth in the applicable trust agreement, (ii) selecting Eligible Investments to be delivered in connection with the settlement of the settlement contracts and as a final distribution in Paired Optional Redemptions, (iii) accepting and processing creation orders for Paired Issuances and redemption orders for Paired Optional Redemptions, and (iv) performing the calculations described above in "Dissemination of Information About the MacroShares."

We have previously obtained no-action relief from the Staff of the Division of Investment Management confirming that enforcement action will not be pursued against MACRO Securities Depositor, LLC, the MACROshares Oil Up Holding Trust, the MACROshares Oil Down Holding Trust, the MACROshares Oil Up Tradeable Trust or the MACROshares Oil Down Tradeable Trust if such entities do not register as investment companies under the 1940 Act. In connection with the MacroShares transaction described herein, the Depositor is relying on such previously-obtained no-action in not registering the Up Trust or the Down Trust under the 1940 Act. Furthermore, neither of the Macro Trusts will hold or trade in commodity futures contracts regulated under the Commodity Exchange Act, as amended ("CEA"), by the Commodity Futures Trading Commission. Neither of the Macro Trusts are commodity pools for purpose of the CEA and the Depositor, the trustee and the administrative agent are not subject to regulation as commodity pool operators or commodity trading advisers.

## **PART II: EXPECTED TRADING OF MACROSHARES**

The Depositor believes that the following characteristics will be exhibited by the MacroShares as they are traded in the secondary market: (i) the sum of the market price of one Up MacroShare and one Down MacroShare (the "Combined Market Price") will tend to track the sum of the Proportionate Underlying Value of one Up MacroShare and the Proportionate Underlying Value of one Down MacroShare (the "Combined Proportionate Underlying Value"), (ii) if the Combined Market Price begins to trade downward away from the Combined Proportionate Underlying Value, market participants will take advantage of the resulting arbitrage opportunity to redeem Paired Shares at such Combined Proportionate Underlying Value in a Paired Optional Redemption, and (iii) if the Combined Market Price trades upward away from the Combined Proportionate Underlying Value, market participants will take advantage of the resulting arbitrage opportunity to create additional Paired Shares at such Combined Proportionate Underlying Value in a Paired Issuance. In the case of both (ii) and (iii) above, the actions taken by market participants will either decrease or increase the supply of MacroShares and, thereby, bring their Combined Market Price back in line with their Combined Proportionate Underlying Value. The depositor does not expect that trading in the MacroShares will have any effect on the futures settlement prices for crude oil in light of the fact that the Paired Trusts will never acquire the oil futures upon the price of which the trusts' respective underlying values are based and will, as a result, never be

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buyers or sellers in the oil futures markets, and the fact that the worldwide volume of futures trading in crude oil far exceeds the expected volume of trading in the MacroShares.

For purposes of understanding how the MacroShares will trade, the MacroShares transaction may be compared to exchange-trade fund (or "ETF") transactions. The MacroShares transaction is structured differently than ETFs insofar as, among other structural differences, (i) the MacroShares transaction is wholly synthetic and no underlying assets that reflect the value of the reference index or price are acquired by the Macro Trusts, (ii) the MacroShares transaction consists of "paired" shares consisting of Up MacroShares the value of which increases as the value of the referenced asset rises and Down MacroShares the value of which increases as the value of the referenced asset falls, and (iii) such Paired Shares must be issued and redeemed together in Creation Units. However, the Depositor believes that, in the secondary market, the Applicable Reference Price of Crude Oil will be a key variable in determining the market price of the Paired Shares. Accordingly, with a sufficiently large initial paired issuance of MacroShares on the closing date, together with the creation of sufficient liquidity by market makers, premiums or discounts in the Combined Market Price of the Paired Shares to their Combined Proportionate Underlying Value should be corrected by market activity.

The level of the Applicable Reference Price of Crude Oil is available during the course of each trading day on the consolidated tape and through various market data vendors. The formula disclosed in the Up MacroShares Prospectus and the Down MacroShares Prospectus converts a change in the level of the Applicable Reference Price of Crude Oil into the Underlying Value for each of the Paired Trusts, which can also be expressed on a per share basis as the Proportionate Underlying Value of each MacroShare. In order to encourage trading in the MacroShares and to promote liquidity and price transparency, the Depositor has engaged, on behalf of the Macro Trusts, the AMEX to calculate and make available to the public indicative intraday Proportionate Underlying Values of the Up MacroShares and Down MacroShares for each new indicative value of the Applicable Reference Price of Crude Oil that is received by the AMEX at 15 second intervals throughout the trading day. Accordingly, both market specialists and the individual investor will have at their disposal during the course of each business day the information necessary to make an informed and rational decision about whether and at what price to buy or sell MacroShares.

To the extent that the Combined Market Price of the Paired Shares does, from time to time, diverge from the Combined Proportionate Underlying Value of those shares, the Depositor believes that market specialists will take advantage of the resulting arbitrage opportunity to direct a Paired Optional Redemption or a Paired Issuance the effect of which will be to bring the Combined Market Price of the Paired Shares back in line with their Combined Proportionate Underlying Value. If the Combined Market Price of the Paired Shares (together with the transaction costs of effecting a redemption) is less than their Combined Proportionate Underlying Value, market specialists will have an incentive to take advantage of the fact that the MacroShares structure allows them to redeem the shares at any time at the Combined Proportionate Underlying Value of those shares and they will acquire such shares in the open market and direct a Paired Optional Redemption. Such redemption will reduce the number of outstanding shares and cause a resulting increase in their market price. If the Combined Market Price of the Paired Shares is greater than their Combined Proportionate Underlying Value (together with the transaction costs of effecting a paired issuance), market specialists will have an incentive to take advantage of the fact that the MacroShares structure allows the Paired Trusts to issue shares at any time at the Combined Proportionate Underlying Value of those shares and they will direct the trust to effect a Paired Issuance. Such issuance will increase the number of outstanding shares and cause a resulting decrease in their Combined Market Price. Even if the Up MacroShares are trading at a premium while, at the same time, the Down MacroShares are trading at a discount (or vice-versa), if the market specialist can realize a net

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gain by effecting either a Paired Optional Redemption (if the Combined Market Price of the Paired Shares would be priced at a net discount to their Combined Proportionate Underlying Value) or a Paired Issuance (if the Combined Market Price of the Paired Shares would be priced at a net premium over their Combined Proportionate Underlying Value), the market specialist will have an incentive to effect such a redemption or issuance. Accordingly, the Depositor believes that, during any period when the Combined Market Price of the Paired Shares is in excess of, or less than, their Combined Proportionate Underlying Value, the terms of the MacroShares transaction will permit investors to engage in arbitrage activity that will realign such Combined Market Price with such Combined Proportionate Underlying Value.

### **PART III. REQUEST FOR RELIEF**

#### **Introduction**

The Depositor, on behalf of itself, the Up Trust and the Down Trust, the AMEX, any other Market and persons or entities engaging in transactions in the MacroShares, respectfully requests no-action relief from Rule 101 and 102 of Regulation M, Rule 10b-10 and Rule 10b-17 promulgated, in each case, under the Exchange Act and Section 11(d) of the Exchange Act and Rule 11d1-2 promulgated thereunder, in connection with transactions in Up MacroShares and Down MacroShares and the issuance and redemption of Paired Shares, as discussed below.

#### **1(a). Rule 101 of Regulation M: No-Action Relief for Secondary Transactions and Redemptions**

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchaser[s]" from bidding for, purchasing 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.<sup>6</sup> 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 a distribution.

Orders directing a Paired Issuance of Paired Shares may be placed by authorized participants on any price determination day throughout the course of a MacroShares transaction. Accordingly, a "distribution" of the Paired Shares may be occurring continuously.<sup>7</sup> The authorized participants who may from time to time direct Paired Issuances will not be part of a syndicate or a selling group and will not receive fees or commissions from the Macro Trusts in exchange for effecting such issuances and redemptions. Nevertheless, such persons may be deemed to be "underwriters" or "distribution participants,"<sup>8</sup> because they may be deemed to be participating in a distribution. Accordingly, the Depositor respectfully requests no-action relief from Rule 101 to permit persons who may be deemed to be participating in a distribution of MacroShares to bid for or purchase, redeem or

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<sup>6</sup> 17 C.F.R. § 242.101(2005).

<sup>7</sup> A "distribution" is defined in Section 100(b) under Regulation M as "an offering . . . that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods," 17 C.F.R. § 242.100(b)(2005).

<sup>8</sup> A "distribution participant" is defined as "an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution." 17 C.F.R. § 242.100(b)(2005).

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otherwise engage in other secondary market transactions in such MacroShares during their participation in the distribution.

Paragraph (c)(4) of Rule 101 exempts from its application redeemable securities issued by open-end management companies (as such terms are defined in the 1940 Act).<sup>9</sup> As discussed in Part I herein, in reliance on no-action relief previously obtained by the Depositor from the Division of Investment Management, the trusts will not be required to register as investment companies. Furthermore, although an order for a Paired Optional Redemption may be placed at any time, the market specialist wishing to effect such redemption must tender Paired Shares in the aggregate minimum amount constituting a Creation Unit. Nevertheless, the rationale behind the exemption contained in paragraph (c)(4) of Rule 101 for redeemable securities of open-end management companies is applicable to the Macro Trusts, because the ability to create and redeem the MacroShares at any time (subject to the requirement of aggregating them in Creation Units) will ensure that the Combined Market Price of such shares does not diverge significantly from their Combined Proportionate Underlying Value. If the continuous issuance and redemption of MacroShares were to be precluded by the application of Rule 101 to MacroShares transactions, the Macro Trusts would not be able to operate as intended.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. However, MacroShares transactions do not implicate the manipulative abuses that Rule 101 intends to prevent. MacroShares are derivative investments and their Combined Proportionate Underlying Value, which may be realized by market participants at any time by effecting a Paired Optional Redemption, is determined by reference to the value of the referenced asset, which is based on the Applicable Reference Price of Crude Oil; the determination of such value is wholly independent of trading in MacroShares. Any attempt to manipulate the market price of the Up MacroShares is expected to have an offsetting effect on the market price of the Down MacroShares and vice versa, preventing the price manipulator from affecting the Combined Market Price of the Paired Shares, which the Depositor believes will tend to track their Combined Proportionate Underlying Value. Any divergence between the Combined Market Price of MacroShares and their Combined Proportionate Underlying Value is expected to create an incentive for arbitrage activity which will bring such price back in line with Combined Proportionate Underlying Value. Furthermore, applying the restrictions contained in Rule 101 to MacroShares transactions may inhibit this essential arbitrage activity, because such application would prevent persons who may be deemed to be participating in a distribution of MacroShares from acquiring such shares in secondary transactions in order to effect a Paired Optional Redemption.

In view of the lack of any real potential for the issuance and secondary market trading of MacroShares to affect significantly the pricing of those shares, application of Rule 101 to a broker-dealer or other persons who may be participating in a distribution of MacroShares is unnecessary and could hinder broker-dealers or other persons in their creation and redemption activities and in their day-to-day ordinary business of buying and selling MacroShares and, thus, undermine the potential beneficial market effect of MacroShares trading. Therefore, the Depositor respectfully requests that the Staff not recommend enforcement action to the Commission if persons who may be deemed to be participating in a distribution of MacroShares redeem or otherwise engage in other secondary market transactions in such MacroShares during their participation in the distribution as represented above.

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<sup>9</sup> 17 C.F.R. § 242.101(c)(4)(2005).

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### 1(b). Rule 102 of Regulation M: No-Action Relief for Redemptions

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.<sup>10</sup> The purpose of Rule 102 is similar to the purpose of Rule 101 of Regulation M in that it seeks to prevent manipulation of the price of a security during its distribution and to protect the integrity of the offering price. Based on the reasoning described in the previous paragraph, the Depositor respectfully requests no-action relief from Rule 102 in order to permit the Macro Trusts to effect, and any authorized participant to direct, Paired Optional Redemptions of MacroShares despite the fact that a continuous offering of the MacroShares is occurring during the same time as such redemptions. The Macro Trusts respectfully submit that such exchanges do not constitute a manipulative practice for purposes of Rule 102. Although any redemption of MacroShares will have an effect on the market price of the MacroShares by decreasing the supply of such MacroShares, as discussed above in Part II: Expected Trading of the MacroShares, the fact that such MacroShares may be redeemed at any time and the fact that redemptions will always be effected at the Combined Proportionate Underlying Value of such shares, ensures that the market price of any newly-created MacroShares cannot be manipulated by means of Paired Optional Redemptions of existing shares. Accordingly, the Depositor respectfully submits that providing no-action relief to the Macro Trusts and selling authorized participants from the application of Rule 102 would not be inconsistent with the purpose of such Rule.

### 2. Rule 10b-10 of the Exchange Act: No-Action Relief

Rule 10b-10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold.<sup>11</sup> The Depositor respectfully requests (A) an interpretive release confirming that the Rule does not apply to the following set of transactions: a broker or dealer who is an authorized participant, acting on behalf of several holders of MacroShares, (i) tenders such shares for a Paired Optional Redemption and (ii) delivers to each holder of MacroShares such holder's share of the Treasuries it received as the final distribution in such redemption, or, alternatively, (B) no-action relief for these transactions from the application of Rule 10b-10, to the extent described below. The Depositor is not requesting relief from Rule 10b-10 in connection with Paired Issuances (which requires the deposit of immediately available funds into the Paired Trusts rather than a deposit of any Treasuries or other securities) or purchases or sales of MacroShares in the secondary market.

Unless a redemption is being effected on a scheduled quarterly distribution date or sufficient funds are available from Paired Issuances being effected on the same day as the redemption or from the maturity proceeds of the Treasury Repos held by the Paired Trusts, the trustee, acting on behalf of the Paired Trusts, will redeem the Paired Shares by delivering to the authorized participant who is effecting the redemption on behalf of its customers, Treasuries with a value (based on their purchase price plus accrued but unpaid income thereon) equal to the respective Proportionate Underlying Values of the

<sup>10</sup> 17 C.F.R. § 242.102 (2005).

<sup>11</sup> 17 C.F.R. § 240.10b-10 (2005). We note that broker-dealer transactions that are executed in "U.S. Savings Bonds" are exempted from Rule 10b-10 by paragraph (a) thereof.

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shares being redeemed. Market participants on whose behalf a broker or dealer who is an authorized participant would be effecting a redemption will already know that they will receive a final distribution equal to the Proportionate Underlying Value of their MacroShares and, therefore, they know the administrative agent's valuation of the Treasuries delivered in the redemption. The current market value of those Treasuries may also be readily determined by reference to various publicly-available sources. Accordingly, the Depositor respectfully requests confirmation that broker or dealers who redeem MacroShares on behalf of their customers and then deliver to such customers the Treasuries they received from the Paired Trusts in redemption of such MacroShares are not subject to the disclosure obligations set forth in Rule 10b-10 with respect to the delivered Treasuries.

Alternatively, the Depositor proposes that brokers and dealers who redeem, on behalf of a customer, MacroShares and receive Treasuries as the final distribution on those shares, be permitted to provide their customers with a statement setting forth only (i) the Proportionate Underlying Value of each MacroShare being redeemed and (ii) the type of each Treasury received in the Paired Optional Redemption. In view of the fact that Treasuries are essentially cash-equivalent instruments and their prices on any date of determination are publicly available from numerous sources, requiring broker and dealers to identify the market price of each type of Treasury being delivered in a redemption would be an unnecessary burden and would only provide their customers with information that the customers can readily obtain elsewhere at no additional cost.

The Commission, in previous no-action letters, has granted the relief requested above, subject to the following conditions, with which the Paired Trusts are prepared to comply:<sup>12</sup> (i) confirmation statement of redemptions of MacroShares will contain all of the information specified in paragraph (a) of Rule 10b-10, other than the price and the number of Treasuries received by the customer in the redemption, (ii) any confirmation statement relating to a redemption effected on behalf of a customer that omits the price or number of Treasuries will contain a statement that such omitted information will be provided to the customer upon request and (iii) all such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

### 3. Rule 10b-17 of the Exchange Act: No-Action Relief

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution, stock split or rights offering) relating to such class of securities.<sup>13</sup> Most notably, Rule 10b-17 requires ten (10) days' prior notice for distributions, and such notice must describe the amount of cash to be paid on a per share basis. For the reasons set forth below, the Depositor respectfully requests no-action relief from the foregoing requirement of Rule 10b-17 pursuant to paragraph (b)(2) thereof.<sup>14</sup>

The MacroShares transaction will have quarterly distribution dates that are scheduled to occur on the second business day preceding each record date, which will occur on the last business day of March, June, September and December of each year. On each quarterly distribution date, each of the

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<sup>12</sup> See e.g. Vanguard International Equity Index Funds, SEC No-Action Letter, 2005 WL 850189 (Mar. 9, 2005).

<sup>13</sup> 17 C.F.R. § 240.10b-17(2005)

<sup>14</sup> *Id.* § 240.10b-17(b)(2).



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Paired Trusts will make a quarterly distribution of income on its MacroShares to the extent that such trust realized income on its Eligible Investments. Under the income distribution agreement, each of the Paired Trusts will be entitled to a portion of the income realized by both of the Paired Trusts based on the Applicable Reference Price of Crude Oil and the resulting Underlying Value of each such trust on each day of the preceding calculation period. The Proportionate Underlying Value of the MacroShares will decrease on the day following each quarterly distribution date, but that such change will be the result of the making of a scheduled quarterly distribution of available income by the Paired Trusts and will be unrelated to a change in the Applicable Reference Price of Crude Oil. The portion of a MacroShare's Proportionate Underlying Value that is attributable to accrued income is calculated based on two variables – (i) the daily accrual rate (net of the applicable fee accrual rate) that is being realized by the Paired Trusts on their Eligible Investments, and (ii) the level of the Applicable Reference Price of Crude Oil on each day of the calculation period that precedes each quarterly distribution date, which will determine how much of its accrued and available income each Macro Trust will be entitled to retain and how much it must pay to its Paired Trust.

A primary purpose of Rule 10b-17 is to put on notice both the public and the broker-dealer community that the offeror is intending to distribute a dividend, enabling the parties in equity transactions and their broker-dealers to take into account the coming distribution and adjust the price paid for the equity securities accordingly.<sup>15</sup> The Commission, in its adopting release of Rule 10b-17, specifically noted that "an exemption will be granted only in special circumstances where the purposes of the rule are not applicable and where the NASD does not need the report to enable it to adequately disseminate the information to its members and the investing public."<sup>16</sup> In the case of quarterly distributions of income in MacroShares transactions, the investing public and the broker-dealer community will already be aware of the dates on which such distributions will be made on the MacroShares and the best estimate of the amount of each such distribution may be made by the investor on any date of determination by reference to the portion of the Proportionate Underlying Value of each MacroShare that is attributable to accrued interest. This is also the only basis upon which the Depositor could make an estimate of the amount of a quarterly distribution. However, such estimate will be inaccurate if the Applicable Reference Price of Crude Oil and, therefore, the respective Proportionate Underlying Values of the Paired Shares fluctuate significantly during the last 10 days preceding the distribution date. The Depositor cannot predict or estimate the effect of such volatility in the Applicable Reference Price of Crude Oil.

The Commission has recognized the problem of "last minute changes" in the distribution amount noticed by an issuer pursuant to Rule 10b-17.<sup>17</sup> In recognition of this dilemma, paragraph (c) of Rule 10b-17 exempts open-end investment companies and unit investment trusts which issue redeemable securities from the application of the Rule. Due to the redeemable nature of the securities that are issued by such entities and the fact that distributions thereon are based upon their underlying value which can fluctuate daily, the amount that will be distributed is, at best, an estimate based on the underlying value at the time when the distribution amount is announced and subject to change during the 10-day period prior

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<sup>15</sup> See Timely Advance Notice of Record Dates, Exchange Act Release No. 34,9076, 1971 WL 126115 (Feb. 17, 1971).

<sup>16</sup> See Adoption of Rule 10b-17, Exchange Act Release No. 34,9192, 1971 WL 120514, at \*1 (June 7, 1971).

<sup>17</sup> See *id.*, 1971 WL 120514, at \*2

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to the date of the actual distribution. Although the Macro Trusts are not expected to be registered investment companies and their shares must be redeemed in aggregations of Paired Shares constituting at least one Creation Unit or integral multiples thereof, the redeemable nature of the MacroShares creates a similar problem to that which is addressed by paragraph (c) of Rule 10b-17. In addition, in the case of the MacroShares, Paired Optional Redemptions and Paired Issuances, which may be effected on any price determination day, may alter the composition of, and the yield realized on, the treasuries held by the Paired Trusts during the last 10 days of each calculation period. Accordingly, the Depositor respectfully asserts that providing ten days' prior notice of quarterly income distributions would be impractical and that the purpose of Rule 10b-17 would not be frustrated if no-action relief from such Rule were granted for such distributions in MacroShares transactions. As noted above, the Commission has recognized impracticality as a basis for delaying an announcement of a dividend (as opposed to any deceptive purpose on the part of the issuer)<sup>18</sup> and the Depositor respectfully requests no-action relief from the 10 days' prior notice requirement for dividends contained in Rule 10b-17.

#### 4. Section 11(d) of the Exchange Act and Rule 11d-2 promulgated thereunder

Section 11(d)(1) of the Exchange Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction.<sup>19</sup> Exchange Act Rule 11d1-2 provides an exemption from Section 11(d)(1) for securities issued by a registered open-end investment company or unit investment trust with respect to transactions by a broker-dealer who extends credit on such securities, provided the person to whom credit has been extended has owned the securities for more than thirty days.<sup>20</sup> The Depositor respectfully requests confirmation that the exemption from Section 11(d)(1) that is provided by Rule 11d1-2 will be applicable to both those broker-dealers who are authorized participants with respect to the MacroShares and those broker-dealers engaged in transactions in MacroShares solely in the secondary market.

Section 11(d)(1) was enacted to address issues engendered by the segregation of the functions of brokers and dealers and its purpose was to prevent broker-dealers from "share-pushing" by offering credit to facilitate the purchase of newly-issued securities.<sup>21</sup> However, the Commission has recognized in prior no-action letters that both broker-dealers who act as authorized participants in ETFs and other open-end investment companies and broker-dealers who engage solely in secondary market transactions do not have incentives to use credit to engage in the "share-pushing" that Section 11(d)(1) was designed to prevent.<sup>22</sup> The rationales for exempting redeemable securities of open-end investment

<sup>18</sup> See, *id.* 1971 WL 120514, at \*2.

<sup>19</sup> 15 U.S.C. § 78k(d)(1).

<sup>20</sup> 17 C.F.R. § 240.11d1-2 (2005).

<sup>21</sup> In the words of the House Committee reporting on the bill which included Section 11(d)(1): "[i]t strikes as one of the greatest potential evils inherent in the combination of the broker and dealer function in the same person by assuring that he will not induce his customers to buy on credit securities which he has undertaken to distribute to the public." H.R. Rep. No. 73-1383, at 22 (1934).

<sup>22</sup> See, e.g., Derivative Products Committee of the Securities Industry Association, SEC No-Action Letter 2005 WL 3311414, at \*4, (Nov. 21, 2005) (the "SIA Letter").

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companies from the application of Section 11(d) are also applicable to the MacroShares. Broker-dealers in MacroShares transaction are under no obligation to direct the Paired Issuance of MacroShares or to participate in their distribution. Paired Issuances will be directed only in response to genuine market demand or as a result of arbitrage opportunities, and broker-dealers who act as authorized participants in MacroShares transactions will be required to pay a fee to reimburse the trustee of the Paired Trusts for the administrative costs of effecting each Paired Issuance; thus, there is an incentive for broker-dealers to refrain from directing a Paired Issuance of MacroShares in the absence of genuine market demand for such shares. Furthermore, neither the broker-dealers who act as authorized participants nor the broker-dealers who engage exclusively in secondary transactions will receive any commissions or fees from the Macro Trusts or the Depositor for creating and distributing MacroShares in contrast to the remuneration they usually receive for participating in an initial offering of shares from the issuing investment fund or the underwriting syndicate, other than any fee that any underwriter receives for initially underwriting the transaction, as disclosed in the Up MacroShares Prospectus. Finally, the derivative nature of the MacroShares and the daily publication of their Proportionate Underlying Value will create a level of price transparency that will make MacroShares transactions less susceptible to "share-pushing."

The Commission has deemed it appropriate to grant relief from the application of Section 11(d)(1) in the past, subject to the following two conditions with which the Depositor and the Macro Trusts are prepared to comply or to monitor compliance therewith by broker-dealers who act as authorized participants:<sup>23</sup> (i) the broker-dealers who act as authorized participants do not, directly or indirectly, receive from the Depositor, either of the Macro Trusts or any affiliate of any of the foregoing entities, receive any payment, compensation or other economic incentive to promote or sell the MacroShares (other than non-cash compensation permitted under NASD Rule 2830 (I)(5)(A), (B) or (C)) and (ii) such broker-dealers do not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on the MacroShares before thirty days have elapsed from the date that the MacroShares initially commenced trading (except to the extent that such extension, maintenance or arranging of credit is otherwise permitted pursuant to Rule 11d1-2).

Based on the foregoing, the Depositor respectfully requests clarification that Section 11(d)(1) does not apply to broker-dealers that engage exclusively in secondary market transactions in the MacroShares on behalf of themselves or their customers. Further, the Depositor requests confirmation that broker-dealers who act as authorized participants may treat the MacroShares as shares of a "Qualifying ETF" (as defined in the SIA Letter noted in footnote number 22, herein) and, in reliance on the class exemption granted by that letter, extend credit or maintain or arrange for the extension or maintenance of credit on the MacroShares, so long as the two conditions provided for in the SIA Letter (and stated above) are satisfied.

In addition, the Depositor respectfully requests that both broker-dealers who act as authorized participants and broker-dealers engaged solely in secondary market transactions in MacroShares be permitted to avail themselves of the exemption provided by Rule 11d1-2. Although the Paired Trusts are not expected to be registered as investment companies under the 1940 Act, in view of certain relevant similarities between MacroShares and ETF shares described above, the Depositor requests that broker-dealers who act as authorized participants for the Paired Trusts be permitted to rely on the exemption provided by Rule 11d1-2 to ETFs and other registered open-ended investment

<sup>23</sup> See, *id.* See also, e.g., *streetTRACKS Gold Trust*, SEC No-Action Letter, 2005 WL 3695283, at \*1 (Dec. 12, 2005) (modification of prior relief).

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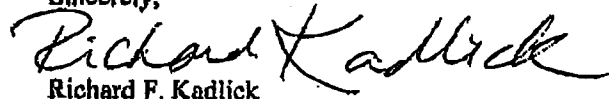
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companies and unit investment trusts which issue redeemable securities. In particular, the Depositor requests confirmation that broker-dealers who act as authorized participants may, in reliance on Rule 11d1-2, directly or indirectly extend credit or maintain or arrange for the extension or maintenance of credit on MacroShares that have been owned by the persons to whom credit is provided for more than 30 days.

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For the reasons set forth herein, the Depositor respectfully requests no-action relief from, or advice regarding, the provisions of the Exchange Act and the rules promulgated thereunder which are outlined in this letter.

Sincerely,



Richard F. Kadlick