



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

DIVISION OF  
MARKET REGULATION

December 22, 2006

Richard F. Kadlick, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522

**Re: MACRO Securities Depositor, LLC**

Dear Mr. Kadlick:

In your letter dated December 22, 2006, on behalf of MACRO Securities Depositor, LLC, the Claymore MACROshares Oil Up Tradeable Trust (the "Up-MACRO Tradeable Trust"), the Claymore MACROshares Oil Down Tradeable Trust (the "Down-MACRO Tradeable Trust"), the American Stock Exchange and any other national securities exchange or national securities association on or through which the shares of the Up-MACRO or Down-MACRO Tradeable Trusts (generically, the "MACRO Tradeable Shares") may subsequently trade and persons and entities engaging in transactions in the MACRO Tradeable Shares, you request exemptions from, or no-action or interpretive advice regarding, Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-10, 11d1-2, and 10b-17 thereunder.

Response:

Section 11(d)(1), Rule 10b-10, and Rule 11d1-2

As discussed in a telephone conversation,<sup>1</sup> we are treating your request for relief under Section 11(d)(1) of the Exchange Act, and Rules 10b-10 and 11d1-2 thereunder, as a request that the staff of the Division of Market Regulation ("Staff") confirm that it will not recommend enforcement action to the Commission if a broker-dealer treats MACRO Tradeable 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 Up-MACRO and the Down-MACRO Tradeable Trusts, and without necessarily concurring in your analysis, the Staff will not recommend

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<sup>1</sup> Telephone conversation between Matthew A. Daigler and Richard F. Kadlick on December 22, 2006.

enforcement action to the Commission if a broker-dealer treats MACRO Tradeable Shares, for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10 and 11d1-2 thereunder in the Class Relief Letter, as shares of a Qualifying ETF. Accordingly, with respect to MACRO Tradeable 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.

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, the Staff will not recommend to the Commission enforcement action under Rule 10b-17 with respect to such distributions in MACRO transactions.

These positions are based on the facts presented and the representations you have made, and any different facts and circumstances may require a different response. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws or self-regulatory organization rules.

Finally, we note that the relief granted in this letter is effective as of the date of the letter. As such, any transactions in the MACRO Tradeable Shares effected prior to the date of this letter are not within the scope of the no-action relief granted herein.<sup>2</sup>

Sincerely,



James A. Brigagliano  
Acting Associate Director

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<sup>2</sup> We note that persons seeking this type of relief should submit requests for relief concurrently with the SRO's filing of proposed rule changes regarding the listing and trading of the subject securities and receive all requested exemptive, interpretive, and no-action relief prior to the initial trading of the subject securities.

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December 22, 2006

James A. Brigagliano, Esq.  
Assistant Director, Trading Practices  
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RE: Request of MACRO Securities Depositor, LLC for Exemptive, Interpretive and No-Action Relief from, or Advice Regarding, Section 11(d)(1) of the Securities Exchange Act of 1934, and Rules 11d1-2, 10b-10 and 10b-17 promulgated under the Securities Exchange Act of 1934

Dear Mr. Brigagliano:

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 Claymore MACROshares Oil Up Tradeable Trust (the "Up-MACRO tradeable trust"), the Claymore MACROshares Oil Down Tradeable Trust (the "Down-MACRO tradeable trust"), the American Stock Exchange ("AMEX") and any other national securities exchange or national securities association on or through which the shares of the Up-MACRO or Down-MACRO tradeable trust (generically, the "MACRO tradeable shares"), may subsequently trade (each such organization, a "Market") and persons and entities engaging in transactions in the MACRO tradeable shares, wishes respectfully to request, from the Securities and Exchange Commission (the "Commission"), exemptive, interpretive and no-action relief from, or advice regarding, Section 11(d)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 11d1-2, Rule 10b-10 and Rule 10b-17, promulgated, in each case, under the Exchange Act. We kindly request that you provide us with your comments and any concerns relating to the reasoning contained in this letter and indicate to us whether we may submit a formal request for exemptive, interpretive and no-action relief based on the discussion contained herein.

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

### **Part I: SUMMARY OF THE MACROs STRUCTURE**

This section contains a brief summary of the MACROs structure. For more detailed information about any particular aspect of that structure, please refer to Amendment no. 10 to the registration statement, file no. 333-116566, which was filed and became effective on November 29, 2006, including the "MACROs Oil Up Prospectus" included therein, and Amendment no. 4 to the registration statement, file no. 333-135120, which was filed and became effective on November 29, 2006, including the "MACROs Oil Down Prospectus" included therein.

#### **The MACRO Holding and Tradeable Trusts**

The Depositor has created two separate trusts under New York law: the Claymore MACROshares Oil Up Holding Trust or the "Up-MACRO holding trust" and the Claymore MACROshares Oil Down Holding Trust or the "Down-MACRO holding trust." We refer to the Up-MACRO and the Down-MACRO Holding Trust collectively as "paired holding trusts," and each of them, generically, as a "MACRO holding trust." The Up-MACRO holding trust will issue "Up-MACRO holding shares" and the Down-MACRO holding trust will issue "Down-MACRO holding shares," which we refer to collectively as "paired holding shares," or generically as "MACRO holding shares." Each MACRO holding share issued by a MACRO holding trust will represent an undivided beneficial ownership interest in the assets of that trust.

The Depositor has also established two additional trusts: the Claymore MACROshares Oil Up Tradeable Trust, or the "Up-MACRO tradeable trust," and the Claymore MACROshares Oil Down Tradeable Trust, or the "Down-MACRO tradeable trust." The Up-MACRO and Down-MACRO tradeable trusts are also each referred to generically as a "MACRO tradeable trust." A MACRO tradeable trust is not paired with any other tradeable trust, because the MACRO tradeable trusts do not enter into any agreements with each other or undertake any obligations other than the shares issued by each of them. A portion of the Up-MACRO holding shares, representing at least a majority of all outstanding Up-MACRO holding shares issued by an Up-MACRO holding trust, will be on deposit in the related Up-MACRO tradeable trust, and a portion of the Down-MACRO holding shares, representing at least a majority of all outstanding Down-MACRO holding shares issued by a Down-MACRO holding trust, will be held on deposit in the related Down-MACRO tradeable trust.<sup>1</sup> The only assets of each MACRO tradeable trust will be the MACRO holding shares on deposit in such trust. The "Up-MACRO tradeable shares" issued by the Up-MACRO tradeable trust will represent undivided beneficial ownership interests in the Up-MACRO holding shares on deposit in that trust. The "Down-MACRO tradeable shares" issued by the Down-MACRO tradeable trust will represent undivided beneficial ownership interests in the Down-MACRO holding shares on deposit in that trust. The Up-MACRO holding trust and related Up-

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<sup>1</sup> There may be periods of time when the Up-MACRO tradeable trust holds less than a majority of the Up-MACRO holding shares and the Down-MACRO tradeable trust holds less than a majority of the Down-MACRO holding shares as a result of redemption and creation activity. The Administrative Agent is required to use commercially reasonable efforts to remedy such a situation by requesting holders of MACRO holding shares to deposit their shares into the related tradeable trust and to accept tradeable shares in exchange for such holding shares. If the Administrative Agent is unable to remedy the situation within 90 days, a termination trigger (as defined herein) will occur.

MACRO tradeable trust have registered their respective shares under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to a joint registration statement, file no. 333-116566. The Down-MACRO holding trust and the related Down-MACRO tradeable trust have registered their respective shares under the Securities Act pursuant to a joint registration statement, file no. 333-135120.

The Up-MACRO tradeable shares are listed on the AMEX under the symbol "UCR," and the Down-MACRO tradeable shares are listed on the AMEX under the symbol "DCR." The AMEX, on behalf of the MACRO tradeable trusts, made an application to the Commission pursuant to Rule 19b-4 of the Exchange Act to allow for the trading of the MACRO tradeable shares. Such application was approved and trading of the MACRO tradeable shares commenced on the AMEX on November 30, 2006.

Each MACRO holding trust was formed pursuant to a trust agreement among the Depositor, Investors Bank & Trust Company, acting in the capacity of a "trustee," Claymore Securities Inc., acting in the capacity of an "administrative agent" and a "marketing agent," and MACRO Financial, LLC, acting in the capacity of an additional "marketing agent." The trustee, acting at the direction of the administrative agent, invests all of the proceeds of each issuance of a MACRO holding trust's MACRO holding shares in bills, notes and bonds guaranteed by the government of the United States (generically, "Treasuries"), which mature on or prior to each quarterly distribution date, and in overnight repurchase agreements fully collateralized by Treasuries ("Treasury Repos" and, together with Treasuries, "Eligible Investments"). The trustee, acting at the direction of the administrative agent and in accordance with the acquisition guidelines set forth in each of the holding trust agreements, will reinvest the proceeds received by each MACRO holding trust (other than interest income, which is distributed to shareholders, as described herein) upon the maturity of its Eligible Investments in new Treasuries maturing on or prior to the next scheduled quarterly distribution date and new Treasury Repos maturing overnight. The allocation of funds between the Treasuries and the Treasury Repos must be based on the historical redemption experience of the paired holding trusts. The administrative agent is required to seek to direct the purchase of identical Treasuries and Treasury Repos for each of the MACRO holding trusts.

In connection with and prior to their initial issuance of MACRO holding shares, the paired holding trusts have entered into (i) an ISDA master agreement and a related schedule, (ii) a confirmation under such ISDA master agreement which we refer to as an "income distribution agreement" and (iii) a number of additional confirmations under such ISDA master agreement which we refer to as the "settlement contracts," each of which relates to one MACRO Unit of paired holding shares. A "MACRO Unit"<sup>2</sup> consists of 50,000 Up-MACRO holding shares and 50,000 Down-MACRO holding shares.<sup>3</sup> Eligible Investments and any cash on deposit in each MACRO holding trust will secure that trust's obligations to its paired MACRO holding trust under the settlement contracts and the income distribution agreement.

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<sup>2</sup> "MACRO Units" are similar to the "Creation Units" used in ETF transactions.

<sup>3</sup> The amount of assets in the Up-MACRO and Down-MACRO holding trusts will be fixed at a 1:1 proportion and each redemption and issuance of the paired holding shares will be required to be effected in such a manner that such 1:1 proportion of Up-MACRO to Down-MACRO assets is preserved. This requirement is embodied in the rule that redemptions and issuances may only be effected in MACRO Units consisting of an equal number of Up-MACRO and Down-MACRO holding shares. The trust agreements for the MACRO holding trusts prohibit any modification of that proportion.

Each MACRO tradeable trust will only invest in the MACRO holding shares issued by the related MACRO holding trust, as permitted under the terms of its trust agreement. All distributions received on the MACRO holding shares on deposit in each MACRO tradeable trust will be passed through to the shareholders of that MACRO tradeable trust on the date of receipt of such distributions. The fees and expenses of administering each MACRO tradeable trust will be paid by the related MACRO holding trust. Accordingly, each MACRO tradeable share will represent a pass-through interest that is economically equivalent to one MACRO holding share.

### **How the MACROs Transaction Works**

On any date of determination, the "Underlying Value" of each MACRO holding trust will be calculated using the current level of the Applicable Reference Price of Crude Oil (as defined below) and this value will represent, on each day, the aggregate amount of assets on deposit in both of the paired holding trusts to which each MACRO holding trust would be entitled if the settlement contracts were settled on that day. The "Proportionate Underlying Value" of each MACRO holding share on any date of determination will be equal to its share of the Underlying Value of its MACRO holding trust, based on the aggregate number of MACRO holding shares that are outstanding on that date. The "Applicable Reference Price of Crude Oil" means, on any price determination day,<sup>4</sup> the daily settlement price of NYMEX light sweet crude oil futures contracts of the designated maturity, which will be the futures contracts that mature during the next succeeding calendar month until the close of the tenth business day of the current calendar month and, from the eleventh business day of the current calendar month until the last day thereof, the futures contracts that mature during the second calendar month succeeding the current calendar month (provided, that if the eleventh business day of any month occurs later than the seventeenth calendar day of that month, then the switch to the second month's contract will be made on the preceding business day that occurs on or prior to the seventeenth day of that calendar month.).<sup>5</sup> Because each MACRO tradeable share will represent a pass-through interest in one MACRO

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

<sup>5</sup> For example, from December 1 until December 14, the MACROs transaction will reference the NYMEX light sweet crude oil futures contracts that mature in January. From December 15 until December 31, the MACROs transaction will reference futures contracts that mature in February. From January 1 until January 15, the futures contracts of designated maturity will continue to be those that mature in February. The reason for this is that around the tenth business day of each calendar month, the highest volume of trading generally moves from the contract that settles in the following month to the contract that settles in the second following month. Accordingly, the MACROs transaction is referencing relevant crude oil futures contracts that arguably reflect a crude oil settlement price that takes into consideration only market knowledge about the future demand and supply of oil. In contrast, as each crude oil futures contract approaches its maturity date, the settlement price of that contract generally begins to trade very closely to the West Texas Intermediate spot price and begins to reflect short-term factors related to the physical storage and delivery of oil, such as a broken delivery pipeline or increased storage costs. "Light sweet" crude oil is a term used to denote a high grade of oil in contrast to "heavy sour" grades of oil. West Texas Intermediate is the most commonly delivered type of oil under the NYMEX light sweet crude oil futures contracts.

The Applicable Reference Price of Crude Oil will be changed to the West Texas Intermediate spot price calculated by the Dow Jones Energy Service (the "Substitute Reference Price") if the NYMEX terminates the license it has granted to MacroMarkets LLC, an affiliate of the Depositor, prior to the Final Scheduled Termination Date or refuses to renew it after the initial five-year term of such license or if the NYMEX fails to generate or publish its settlement price for a period of three (3) business days. Underlying value will thereafter be calculated by reference to the spot price determined by the Dow Jones Energy Service, assuming that MacroMarkets LLC can obtain a license for such price from the Dow Jones Energy

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holding share, the Proportionate Underlying Value of one MACRO tradeable share will be equal to the Proportionate Underlying Value of one MACRO holding share.

On any date of determination, the Underlying Value of the Up-MACRO holding trust will be equal to (A) the *sum of* (i) the amount of cash and Eligible Investments on deposit in the Up-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *plus* (ii) the sum of the Up MACRO holding trust's earned income accruals (as defined below) for each elapsed day of the current calculation period,<sup>6</sup> (B) *plus* (in the event that the Applicable Reference Price of Crude Oil is greater than its "starting level" of \$60), (i) the amount of cash and Eligible Investments on deposit in the corresponding paired Down-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *multiplied by* (ii) the percentage change in the level of the Applicable Reference Price of Crude Oil on that date (or, if that date is not a price determination day, the last preceding price determination day), or (C) *minus* (in the event that the Applicable Reference Price of Crude Oil is less than its starting level), (i) the amount of cash and Eligible Investments on deposit in the Up-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *multiplied by* (ii) the percentage change in the level of the Applicable Reference Price of Crude Oil on that date.

On any date of determination, the Underlying Value of the Down-MACRO holding trust will be equal to (A) the *sum of* (i) the amount of cash and Eligible Investments on deposit in the Down-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *plus* (ii) the sum of the Down-MACRO holding trust's earned income accruals (as defined below) for each elapsed day of the current calculation period, (B) *plus* (in the event that the Applicable Reference Price of Crude Oil is less than its starting level), (i) the amount of cash and Eligible Investments on deposit in the corresponding paired Up-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *multiplied by* (ii) the percentage change in the level of the Applicable Reference Price of Crude Oil on that date, or (C) *minus* (in the event that the Applicable Reference Price of Crude Oil is greater than its starting level), (i) the amount of cash and Eligible Investments on deposit in the Down-MACRO holding trust, taking into account any redemptions or subsequent issuances that have occurred through the relevant date of determination, *multiplied by* (ii) the percentage change in the level of the Applicable Reference Price of Crude Oil on that date.

The percentage change in the Applicable Reference Price of Crude Oil is equal to (a) the ending level of that price on the applicable price determination day *minus* the starting level of that price *divided by* (b) the starting level of that price. When the settlement contracts are settled on a redemption date, an early termination date or the final scheduled termination date, a payment will be made from one MACRO holding trust to the other trust under such contracts in the amount necessary for the assets on deposit in each of the paired MACRO holding trusts to equal the Underlying Value of each such trust on the date of such settlement.

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Service. If such a license cannot be obtained, or if the Substitute Reference Price is no longer published, any other reference price may only be selected with the consent of a majority of the beneficial holders of the holding and tradeable shares.

<sup>6</sup> A "**calculation period**" is the period between quarterly distribution dates that begins on (but excludes) the second business day prior to the preceding distribution date and ends on (and includes) the second business day prior to the current distribution date.

The terms of each settlement contract entered into between the paired holding trusts, including the formula for calculating the settlement payment thereunder, will be identical, but the individual contracts may be redeemed at different points in time, depending upon when authorized participants<sup>7</sup> elect to redeem their shares or when the final scheduled termination date or any early termination date occurs. If the Applicable Reference Price of Crude Oil on any Redemption Date (as defined below) or the price determination day preceding the early termination date or the final scheduled termination date on which the settlement contracts are settled is above the starting level of that price, the Down-MACRO holding trust will be required to make a settlement payment to the Up-MACRO holding trust in accordance with a formula specified in the settlement contracts which will translate movements in the level of the Applicable Reference Price of Crude Oil into a settlement payment. Conversely, if the Applicable Reference Price of Crude Oil on the price determination day on which the settlement contracts are settled is below the starting level, the Up-MACRO holding trust will be required to make a settlement payment to the Down-MACRO holding trust in accordance with such specified formula. After the settlement contracts are settled, each MACRO holding trust will distribute, as a final distribution on its holding shares, all amounts remaining on deposit in such trust (or the applicable redemption percentage of the assets it holds on deposit, depending upon whether all or only a portion of the MACRO holding shares are being redeemed) to the related MACRO tradeable trust and the other holders of its MACRO holding shares or, in the case of a Paired Optional Redemption (as described below), to the authorized participants who have directed such redemption, in proportion to the number of shares held by each such holder. Upon receiving a distribution from its related MACRO holding trust, each MACRO tradeable trust will distribute all amounts received to the holders of its MACRO tradeable shares. As described herein, the MACRO tradeable shares cannot be tendered for redemption, and authorized participants must first exchange their MACRO tradeable shares for the underlying MACRO holding shares.

MACRO holding shares that remain outstanding on any quarterly distribution date will be entitled to receive a quarterly distribution the amount of which will depend on the amount of income accrued on each trust's Eligible Investments during the preceding calculation period and each MACRO holding trust's entitlement to such income under the income distribution agreement. The entitlement of each of the MACRO holding trusts to investment "income" (if any) realized on the Eligible Investments on deposit in both of the paired holding trusts will be calculated under the income distribution agreement on each price determination day<sup>8</sup> occurring during each calculation period. Such entitlement will be based on the Applicable Reference Price of Crude Oil on each such price determination day and is referred to as each trust's "earned income accrual." On any day during a calculation period that is not a price determination day, the entitlement under the IDA for that day will be calculated based on the Applicable Reference Price of Crude Oil on the last preceding price determination day. Payments will be made between the MACRO holding trusts under the income distribution agreement in accordance with a predetermined formula in which the sole unknown variable is the Applicable Reference Price of Crude

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<sup>7</sup> An "authorized participant" means any entity that (1) is a registered broker-dealer 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 in order to engage in securities transactions, (2) is a participant in The Depository Trust Company ("DTC") or has indirect access to the clearing facilities of DTC by virtue of a custodial relationship with a DTC Participant, (3) is not a benefit plan investor for purposes of the Employee Retirement Income Security Act of 1974, as amended, and (4) is a party to 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>8</sup> A "price determination day" is any day on which light sweet crude oil futures contracts trade by open outcry on NYMEX and a settlement price is determined for such contracts in accordance with the rules of the NYMEX.



Oil. If the Applicable Reference Price of Crude Oil on a price determination day is above its starting level, the Up-MACRO holding trust will be entitled under the terms of the income distribution agreement to retain all of the "available income" accrued on its Eligible Investments on that day (that is, the sum of any daily interest income accrual and any daily discount accrual (based on the purchase price the trust paid for the Eligible Investments), reduced by the trust's fees and expenses accrued for that day). In addition, the Up-MACRO holding trust will be entitled to receive a portion of the available income accrued on the Eligible Investments in the Down-MACRO holding trust for that day in an amount calculated on the basis of the increase in the Applicable Reference Price of Crude Oil from the starting level. Conversely, if the Applicable Reference Price of Crude Oil is below the starting level of that price, the Up-MACRO holding trust will not have any entitlement under the income distribution agreement for that day, while the Down-MACRO holding trust will become entitled to receive a portion of the Up-MACRO holding trust's available income for that day, based on the percentage decrease in the Applicable Reference Price of Crude Oil from the starting level. Under the income distribution agreement, the consequences for the Down-MACRO holding trust of the Applicable Reference Price of Crude Oil being above or below its starting level on any price determination day will be the opposite of the consequences thereof for the Up-MACRO holding trust.

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 holding trust. This payment will be made by the trust that has a net liability under the income distribution agreement out of the available income realized by such trust as of such distribution date. The actual payment under the income distribution agreement will be made on the related distribution payment date.<sup>9</sup> The assets of each MACRO holding trust are pledged under the applicable trust agreement to secure such trust's obligations under the income distribution agreement. After each MACRO holding 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 the related MACRO tradeable trust and the other holders of its MACRO holding shares as a quarterly distribution. Each holder of MACRO holding shares (including the related MACRO tradeable trust) will receive its proportionate share of such distribution based on the stated par amount of its shares relative to the aggregate par amount of all MACRO holding shares issued by its MACRO holding trust that remain outstanding on the related distribution date. Each MACRO tradeable trust will pass through such quarterly income distribution on the same distribution payment date on which it receives such distribution to the holders of its tradeable shares, ratably to each holder, based upon the stated par amount of each such holder's shares relative to the aggregate par amount of all outstanding MACRO tradeable shares issued by such MACRO tradeable trust.

### **Form of the MACRO Holding and Tradeable Shares**

The MACRO holding shares and the MACRO tradeable shares 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 MACRO holding shares or the

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<sup>9</sup> A "distribution payment date" means, with respect to each distribution date, the first business day of the month that follows the month in which such distribution date occurred.

MACRO tradeable shares. Instead, DTC or its nominee will be recognized as the record owner of the MACRO holding shares and the MACRO tradeable shares 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 MACRO holding or tradeable share, DTC will enable its participants to take such action and its participants will enable the indirect participants and beneficial owners of such MACRO holding or tradeable shares 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 MACRO holding shares and tradeable shares, 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 MACRO holding or tradeable shares 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 holding and tradeable 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 MACRO Holding Shares**

Holders of the MACRO tradeable shares will not be able to direct a redemption of the underlying MACRO holding shares on deposit in the MACRO tradeable trust. However, any authorized participant may deliver MACRO tradeable shares in a minimum lot of 50,000 shares to the trustee for the MACRO tradeable trust and request in exchange therefor delivery of the underlying MACRO holding shares. For each MACRO tradeable share tendered for exchange, the authorized participant will receive one MACRO holding share. Authorized participants may elect to exchange MACRO tradeable shares they already hold or they may acquire shares in the open market in order to be able to tender them in the required minimum lots of 50,000 for exchange for the underlying MACRO holding shares. The Depositor expects that such exchanges will be done principally in connection with orders for Paired Optional Redemptions.

Paired holding shares may be redeemed in one or more MACRO Units on any price determination day at the direction of authorized participants. Such redemptions are referred to as "Paired Optional Redemptions." All outstanding MACRO holding shares will be automatically redeemed on the final scheduled termination date scheduled to occur in December of 2026, 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 holding trusts for purposes of the federal securities laws, the failure of the administrative agent to have access to the Applicable Reference Price of Crude Oil for a specified number of business days, or an increase or decrease in the Applicable Reference Price of Crude Oil for a specified number of consecutive price determination days to or beyond the level at which the Down-MACRO holding trust or the Up-MACRO holding trust, as the case may be, will be entitled under the settlement contracts to 15% or less of the assets that such trust holds on deposit.

In connection with a Paired Optional Redemption, one or more settlement contracts will be settled and a corresponding portion of the income distribution agreement will be terminated.<sup>10</sup> On a Redemption Date (as defined below), the number of settlement contracts that are settled will be equal to the number of MACRO Units being redeemed, net of any MACRO Units that are being created on the same date. On the final scheduled termination date or an early termination date, all of the settlement contracts will be settled. The redeeming authorized participants will receive a final distribution on the shares tendered for redemption equal to the Proportionate Underlying Value of these shares. If a redemption is directed to be made on a scheduled distribution date, the redeeming holders will receive cash. In the case of any redemption date that is not a distribution date, the trustee for the paired MACRO holding trusts will deliver cash to the extent that sufficient cash proceeds from Paired Issuances ordered on the same day as the redemption and/or sufficient cash proceeds from Treasury Repos are on hand to make such distribution; otherwise, the trustee will deliver a combination of cash and Treasuries (valued at their original purchase price plus accrued income thereon) equal to the Proportionate Underlying Value represented by the shares being redeemed.

In order to effect a Paired Optional Redemption, an authorized participant must present to the trustee paired MACRO holding shares in the minimum aggregate number that constitutes a MACRO Unit. Authorized participants must hold or acquire a sufficient number of Up-MACRO and Down-MACRO holding shares and/or a sufficient number of Up-MACRO and Down-MACRO tradeable shares to constitute one MACRO Unit. Any MACRO tradeable shares that are tendered by an authorized participant in connection with a Paired Optional Redemption will automatically be exchanged for the underlying Up-MACRO and Down-MACRO holding shares, and such holding shares will then be redeemed.

Authorized participants must communicate their redemption order for a specified number of MACRO Units to the administrative agent on any price determination day (the "Redemption Order Date") not later than the earlier of (i) at least thirty (30) minutes prior to the end of trading of light sweet crude oil futures contracts by open outcry on NYMEX on that day or (ii) immediately upon the unanticipated close of trading of such contracts on NYMEX on that day (the "Order Cut-Off Time"). The Order Cut-Off Time will precede the close of trading on the NYMEX to prevent investors from unfairly taking advantage of the redemption process. If MACRO holding shares could be redeemed at the preceding price determination day's settlement price, authorized participants would be incentivized to buy up shares and effect redemptions as soon as the Applicable Reference Price of Crude Oil and, therefore, the price of the MACRO tradeable shares, traded away from the previous day's settlement price.

Redemption orders may be delivered electronically and must conform to the requirements set forth in the participants agreement. Not later than 10:00 a.m. on the business day following the Redemption Order Date (the "Redemption Date"), the redeeming authorized participant must deliver to the trustee (i) the requisite number of Up-MACRO and Down-MACRO holding shares and/or Up-MACRO and Down-MACRO tradeable shares constituting the MACRO Units being redeemed, (ii) the

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<sup>10</sup> The notional amount of each settlement contract is equal to the aggregate par amount of paired MACRO holding shares in one MACRO Unit. The combined notional amount of all of the settlement contracts entered into by the paired MACRO holding 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 MACRO holding trusts will always equal the aggregate par amount of all outstanding paired MACRO holding shares, unless, as described in the preceding sentence, either or both trusts' expenses exceed their income from Eligible Investments.

redemption cash component, if applicable, representing immediately available funds to reimburse the applicable holding trust for excess value that the trust will deliver to the authorized participant in redemption that is effected by means of a delivery of Treasuries rather than cash, and (iii) a transaction fee payable to the trustee to compensate it for the administrative costs associated with the redemption. By 3:00 p.m. New York City time on the Redemption Date, the trustee will deliver to the authorized participant Treasuries and/or cash as the final distribution on the paired holding shares tendered for redemption. The trustee will also concurrently record an adjustment to the number of outstanding Up-MACRO and Down-MACRO holding shares (such adjustment to equal the number of shares that were redeemed, net of the number of shares that were created on the same day), adjust the notional amount of the income distribution agreement to reflect the net decrease (or increase if Paired Issuances on that day exceeded Paired Optional Redemptions) in the aggregate par amount of the outstanding paired holding shares and settle and terminate the same number of settlement contracts as the number of MACRO Units that were redeemed (net of any MACRO Units that were created on the same day).

#### **Paired Issuances of MACRO Holding Shares**

Paired holding shares may be issued in amounts equal to one or more MACRO Units 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-MACRO holding shares and the Proportionate Underlying Value of the Down-MACRO holding shares being created. Such a creation of additional paired holding shares is referred to as a "Paired Issuance."

Authorized participants must deliver a creation order for paired holding shares on any price determination day (the "Issuance Order Date") prior to the Order Cut-Off Time. Creation orders may be delivered electronically and must conform to the requirements set forth in the participants agreement. By 10:00 a.m. New York City time on the business day following the Issuance Order Date (the "Issuance Date"), the authorized participant must have delivered to the trustee immediately available funds on an amount equal to the aggregate Proportionate Underlying Value of the paired holding shares being created and the applicable transaction fee. By 3:00 p.m. New York City time on the Issuance Date, the trustee will deliver to the authorized participant's account at DTC MACRO holding and/or tradeable shares representing the number of MACRO Units that were issued. Issuance orders will automatically be satisfied by the delivery of MACRO tradable shares unless the authorized participant specifically instructs the administrative agent to deliver MACRO holding shares. The trustee will also concurrently record an adjustment to the number of outstanding Up-MACRO and Down-MACRO holding shares (such adjustment to equal the number of shares that were issued, net of the number of shares that were redeemed on the same day), adjust the notional amount of the income distribution agreement to reflect the net increase (or decrease if redemptions exceeded issuances) in the aggregate par amount of the outstanding paired holding shares and enter into the same number of new settlement contracts as the number of MACRO Units that were issued (net of any MACRO Units that were redeemed on the same day). Acting at the direction of the administrative agent, the trustee will invest the funds delivered by the authorized participant in Eligible Investments.

Authorized participants may exchange their MACRO tradeable shares for the underlying MACRO holding shares or exchange MACRO holding shares for the related MACRO tradeable shares without also placing an order for a Paired Optional Redemption or a Paired Issuance. Such exchanges must be effected in minimum lots of 50,000 shares and otherwise conform to the requirements set forth in the participants agreement. There is no separate transaction fee payable by authorized participants for such exchanges.

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

### **Dissemination of Information about MACRO Holding and Tradeable Shares**

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 MACRO 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-MACRO and Down-MACRO tradeable shares by means of the consolidated tape and will post, on a designated page of the AMEX website located as [www.amex.com/amextrader](http://www.amex.com/amextrader): (i) every 15 seconds throughout the trading day, the midpoint of the bid/offer price for one Up-MACRO tradeable share and one Down-MACRO tradeable share, (ii) every 15 seconds throughout the trading day, the Proportionate Underlying Value of one Up-MACRO tradeable share and one Down-MACRO tradeable share, and (iii) the premium or discount of the midpoint of the bid/offer for one Up-MACRO tradeable share and one Down-MACRO tradeable share over or to the respective Proportionate Underlying Value of such shares.

In addition, the administrative agent will publish on its website, located at [www.claymoremacroshares.com](http://www.claymoremacroshares.com), all of the same information as that described in the preceding paragraph, as well as the end-of-day market price and the Proportionate Underlying Value of the Up-MACRO and Down-MACRO tradeable shares 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 MACRO holding and tradeable trust is a passive, unmanaged investment vehicle which has no directors, officers or employees. None of the MACRO trusts 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 holding and tradeable trust acts only through the trustee or the administrative agent as permitted under or directed by the applicable trust agreement. Each MACRO holding trust's business and activities are limited to: (i) issuing and redeeming MACRO holding shares, (ii) entering into the income distribution agreement and the settlement contracts with its paired holding trust, and (iii) investing its funds in Eligible Investments pending application of such funds to effect redemptions. Each MACRO tradeable trust's business and activities are limited to (i) issuing MACRO tradeable shares in exchange for MACRO holding shares deposited into each such MACRO tradeable trust, and (ii) passing through to their shareholders all distributions received on the MACRO holding shares on deposit in such MACRO tradeable trust.

MACRO Securities Depositor, LLC is a Delaware limited liability company which was organized to act as the depositor for the MACRO holding and tradeable trusts. The Depositor is a wholly-owned subsidiary of MacroMarkets LLC, the owner of the patent on the MACROs structure, and Claymore Securities Inc., who is acting as the administrative agent for the MACRO holding and tradeable trusts. The Depositor has identified and engaged the trustee, the administrative agent, the marketing agents and other service providers for the MACRO holding and tradeable trusts. The actions that may be or are required to be taken by the service providers will be governed by the terms of the applicable trust agreement. The Depositor has designated independent registered public accountants as auditors of each MACRO holding and tradeable trust and may from time to time employ legal counsel for the trusts. None of the Depositor, MacroMarkets LLC, Claymore Securities Inc. (other than in performing its duties as administrative agent and marketing agent) 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.

Investors Bank & Trust Company will act as a trustee for each of the MACRO holding and tradeable trusts. The trustee will generally be responsible for the day-to-day administration of the MACRO holding and tradeable trusts in 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 paired holding shares in accordance with the directions of the administrative agent, (ii) causing the paired holding trusts to make their required payments under the income distribution agreement and the settlement contracts, (iii) causing the MACRO holding trusts to make quarterly income distributions and final distributions to the holders of the paired holding shares, (iv) causing the MACRO tradeable trusts to pass through quarterly income distributions and final distributions to the holders of MACRO tradeable shares, (v) administering each of the trusts, (vi) paying the fees and expenses of each trust, (vii) settling purchase orders for Eligible Investments that were placed by the administrative agent, and (viii) performing various calculations, including the calculation of Proportionate Underlying Value on behalf of the MACRO holding and tradeable trusts.

The duties of the administrative agent will include, among other things, (i) investing the funds on deposit in the MACRO holding trusts and delivered to the MACRO holding trusts in Paired Issuances by placing purchase orders for Eligible Investments in accordance with the acquisition guidelines set forth in the relevant holding 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.

We have obtained no-action relief from the Staff of the Division of Investment Management confirming that enforcement action will not be pursued against the MACRO holding and tradeable trusts if they do not register as investment companies under the 1940 Act. Furthermore, none of the MACRO holding or tradeable trusts will hold or trade in commodity futures contracts regulated under the Commodity Exchange Act, as amended ("CEA"), by the Commodity Futures Trading Commission. None of the MACRO holding or tradeable 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 MACRO TRADEABLE SHARES**

The Depositor believes that the following characteristics will be exhibited by the MACRO tradeable shares as they are traded in the secondary market: (i) the market price of each MACRO tradeable share will tend to track its Proportionate Underlying Value, (ii) if the market price of the MACRO tradeable shares begins to trade downward away from their Proportionate Underlying Value, market participants will take advantage of the resulting arbitrage opportunity to redeem MACRO tradeable shares at such Proportionate Underlying Value in a Paired Optional Redemption, and (iii) if the market price of the MACRO tradeable shares trades upward away from their Proportionate Underlying Value, market participants will take advantage of the resulting arbitrage opportunity to create additional MACRO tradeable shares at such 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 MACRO tradeable shares and, thereby, bring their market price back in line with their Proportionate Underlying Value.

For purposes of understanding how MACRO tradeable shares will trade, the MACROs transaction may be compared to ETF transactions. The MACROs transaction is structured differently than ETFs insofar as, among other structural differences, (i) the MACROs transaction is wholly synthetic and the underlying assets (crude oil futures contracts) are not acquired by the MACRO holding trusts, (ii) the MACROs transaction consists of "paired" shares consisting of Up-MACRO holding shares the value of which increases as the value of the referenced asset rises and Down-MACRO holding shares the value of which increases as the value of the referenced asset falls, and (iii) such paired holding shares must be issued and redeemed together in MACRO Units. However, the Depositor believes that, in the secondary market, the Applicable Reference Price of Crude Oil will be the primary variable which will determine the market price of the MACRO tradeable shares, in the same manner in which the market prices of ETF shares fluctuate primarily on the basis of the value of the underlying assets held by the ETF. Accordingly, fluctuations in the price of a MACRO tradeable share is expected to mirror fluctuations in its Proportionate Underlying Value in the same manner in which an ETF share mirrors its net asset value or "NAV."

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 MACROs Oil Up Prospectus and the MACROs Oil Down Prospectus converts a change in the level of the Applicable Reference Price of Crude Oil into the Underlying Value for each of the paired holding trusts, which can also be expressed on a per share basis as the Proportionate Underlying Value of each MACRO holding share. The Proportionate Underlying Value of one MACRO holding share and one MACRO tradeable share will always be equal. In order to encourage trading in the MACRO tradeable shares and to promote liquidity and price transparency, the Depositor has engaged, on behalf of the MACRO tradeable trusts, the AMEX to calculate and make available to the public indicative intraday Proportionate Underlying Values of the Up-MACRO and Down-MACRO tradeable shares 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. The administrative agent will also make available on its website (which is accessible free of charge) on each price determination day the Proportionate Underlying Value of the Up-MACRO and Down-MACRO tradeable shares for that day after the settlement price of the Applicable Reference Price of Crude Oil has been established on NYMEX on that 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 MACRO tradeable shares.

To the extent that the market price of MACRO tradeable shares does, from time to time, diverge from the 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 market price of MACRO tradeable shares back in line with their Proportionate Underlying Value. If the market price of the Up-MACRO and/or Down-MACRO tradeable shares is less than the Proportionate Underlying Value of those shares, market specialists will have an incentive to take advantage of the fact that the MACROs structure allows them to redeem the shares at any time at the 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 market price of the Up-MACRO and/or Down-MACRO tradeable shares is greater than the Proportionate Underlying Value of those shares, market specialists will have an incentive to take advantage of the fact that the MACROs structure allows the trust to issue shares at any time at the 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 market price. Even if the Up-MACRO tradeable shares are trading at a premium while, at the same time, the Down-MACRO tradeable shares are trading at a discount (or vice-versa), if the market specialist can realize a net gain by pairing the Up-MACRO and Down-MACRO tradeable shares and effecting either a Paired Optional Redemption (if, upon being paired, the market price of the resulting MACRO Unit would be priced at a net discount) or a Paired Issuance (if, upon being paired, the market price of the resulting MACRO Unit would be priced at a net premium), the market specialist will have an incentive to effect such a redemption or issuance. Accordingly, the Depositor believes that, during any period when the MACRO tradeable shares are not trading at their Proportionate Underlying Value, the terms of the MACROs transaction will permit investors to engage in arbitrage activity that will realign the Proportionate Underlying Value of the MACRO tradeable shares and their market price.

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

#### **Introduction**

The Depositor, on behalf of itself, the Up-MACRO and Down MACRO tradeable trusts, the AMEX, any other Market and persons or entities engaging in transactions in MACRO tradeable shares, respectfully requests that the Commission grant exemptive interpretive or no-action relief from Section 11(d)(1) of the Exchange Act, and Rule 10b-10, Rule 10b-17 and Rule 11d1-2 promulgated under the Exchange Act, in connection with transactions in MACRO tradeable shares and the creation and redemption of MACRO tradeable shares, as discussed below.

#### **1. Rule 10b-10 of the Exchange Act**

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 MACRO tradeable shares, (i) exchanges such shares for the underlying holding shares, (ii) tenders such holding shares for a Paired Optional Redemption and (iii) delivers to each holder of MACRO tradeable shares a portion of the Treasuries it received in such redemption, or, alternatively, (B) an exemption for these transactions from the application of Rule 10b-10, to the extent described below. The Depositor is not requesting interpretive or exemptive relief from Rule 10b-10 in connection with Paired Issuances (which requires the deposit of immediately available funds into the paired holding trusts rather than a deposit of any Treasuries or other securities) or purchases or sales of MACRO tradeable shares 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 MACRO holding trusts, the Trustee, acting on behalf of the paired holding shares, will redeem the MACRO holding shares by delivering to the redeeming authorized participant who is effecting the redemption on behalf of its customers, Treasuries

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<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.



with a value (equal to their purchase price plus accrued but unpaid income thereon) equal to the respective Proportionate Underlying Values of the 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 one MACRO holding share for each MACRO tradeable share and they will also know the Proportionate Underlying Value of such MACRO holding shares and, therefore, the administrative agent's valuation of the Treasuries delivered in the redemption. The current market value of those Treasuries may be readily determined by reference to various publicly-available sources. Accordingly, the Depositor respectfully requests that the Commission confirm that broker or dealers who redeem MACRO tradeable shares (after exchanging them for the underlying holding shares) on behalf of their customers and then deliver to such customers the Treasuries they received from the MACRO holding trusts in redemption of such holding shares are not subject to the disclosure obligations set forth in Rule 10b-10, with respect to the delivered Treasuries or the MACRO holding shares received in exchange for the MACRO tradeable shares.

Alternatively, the Depositor proposes that brokers and dealers who exchange, on behalf of a customer, MACRO tradeable shares for the underlying holding shares and then redeem such holding shares in exchange for Treasuries, be permitted to provide their customers with a statement setting forth only (i) the number of MACRO holding shares obtained for the MACRO tradeable shares, (ii) the Proportionate Underlying Value of each such MACRO holding share and (iii) 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 MACRO tradeable trusts are prepared to comply:<sup>12</sup> (i) confirmation statements of exchanges of MACRO tradeable shares will contain all of the information specified in paragraph (a) of by Rule 10b-10, other than the price and the number of Treasuries received by the customer in the transaction, (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.

## **2. Rule 10b-17 of the Exchange Act**

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

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<sup>12</sup> See e.g., Vanguard Letter, *supra* note 21, 2005 WL 850189, at \*21.

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

basis. For the reasons set forth below, the Depositor respectfully requests for an exemptive release from the foregoing requirement of Rule 10b-17 pursuant to paragraph (b)(2) thereof.<sup>14</sup>

The MACROs 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 MACRO holding trust will make a quarterly distribution of income on its MACRO holding shares to the extent that the paired MACRO holding trusts realized income on their Eligible Investments. Under the income distribution agreement, each MACRO holding trust will be entitled to a portion of the income realized by both of the paired holding 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. After each MACRO tradeable trust receive a quarterly distribution on the MACRO holding shares it holds on deposit, it will pass through such distribution on its MACRO tradeable shares. The MACROs Crude Oil Up Prospectus and the MACROs Crude Oil Down Prospectus specifically notes that the Proportionate Underlying Value of the MACRO holding and tradeable shares 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 holding trusts and will be unrelated to a change in the Applicable Reference Price of Crude Oil.<sup>15</sup> The portion of a MACRO tradeable share'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 MACRO holding trusts on their Eligible Investments, and (ii) the level of the Applicable Reference Price of Crude Oil on each price determination day of the calculation period that precedes each quarterly distribution date which will determine how much of its accrued and available income each MACRO holding trust will be entitled to retain and how much it must pay to its paired holding 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>16</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>17</sup> In the case of quarterly distributions of income in MACROs 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 MACRO holding shares and passed through to the MACRO tradeable shares 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 MACRO tradeable share 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

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

<sup>15</sup> See the MACROs Crude Oil Prospectus, at page 10.

<sup>16</sup> See Timely Advance Notice of Record Dates, Exchange Act Release No. 34,9076, 1971 WL 126115 (Feb. 17, 1971).

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

Crude Oil and, therefore, the respective Underlying Values of the paired holding shares fluctuates 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>18</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 to the date of the actual distribution. Although the MACRO tradeable trusts are not expected to be registered investment companies and their shares must be redeemed in MACRO Units consisting of paired holding shares, the redeemable nature of the MACRO holding and tradeable shares creates a similar problem to that which is addressed by paragraph (c) of Rule 10b-17. 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 an exemption from such Rule were granted for such distributions in MACRO 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>19</sup> and the Depositor respectfully requests that quarterly distributions be exempted from the 10 days' prior notice requirement for dividends contained in Rule 10b-17.

### **3. 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>20</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>21</sup> The Depositor respectfully requests from the Commission an exemption from Section 11(d)(1) and application of Rule 11d1-2 to both those broker-dealers who are authorized participants and those broker-dealers engaged solely in transactions 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

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

<sup>19</sup> See, *id.* 1971 WL 120514, at \*2.

<sup>20</sup> 15 U.S.C. § 78k(d)(1).

<sup>21</sup> 17 C.F.R. § 240.11d1-2 (2005).

offering credit to facilitate the purchase of newly-issued securities.<sup>22</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>23</sup> The rationales for exempting redeemable securities of open-end investment companies from the application of Section 11(d) are also applicable to the MACRO tradeable shares. Broker-dealers in MACROs transaction are under no obligation to direct the subsequent issuance of MACRO tradeable shares or to participate in their distribution. Subsequent 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 MACROs transactions will be required to pay a fee to reimburse the trustee of the MACRO holding trusts for the administrative costs of effecting each subsequent issuance; thus, there is an incentive for broker-dealers to refrain from directing a subsequent issuance of MACRO holding shares and exchanging them for MACRO tradeable shares in the absence of genuine market demand for such MACRO tradeable shares. Furthermore, neither the broker-dealers who act as authorized participants or the broker-dealers who engage exclusively in secondary transactions will receive any commissions or fees from the MACRO holding or tradeable trusts or the Depositor for creating and distributing MACRO tradeable shares in subsequent issuances, 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. Finally, the derivative nature of the MACRO tradeable shares and the daily and intra-day publication of the Proportionate Underlying Value of the MACRO tradeable shares will create a level of price transparency that will make MACROs 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 tradeable trusts are prepared to comply or to monitor compliance therewith by broker-dealers who act as authorized participants:<sup>24</sup> (i) the broker-dealers who act as authorized participants do not, directly or indirectly, receive from the Depositor, any of the MACRO holding or tradeable trusts or any affiliate of any of the foregoing entities, receive any payment, compensation or other economic incentive to promote or sell the MACRO tradeable shares (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 MACRO tradeable shares before thirty days have elapsed from the date that the MACRO tradeable shares 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

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<sup>22</sup> In the words of the House Committee reporting on the bill which included Section 11(d)(1): "[it] 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>23</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").

<sup>24</sup> See, *id.* See also, e.g., streetTRACKS Gold Trust, SEC No-Action Letter, 2005 WL 3695285, at \*1 (Dec. 12, 2005) (modification of prior relief).

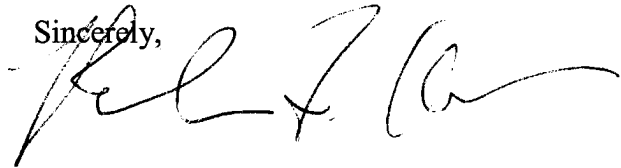
MACRO tradeable shares on behalf of themselves or their customers. Further, the Depositor requests that the Commission confirm that broker-dealers who act as authorized participants may treat the MACRO tradeable shares as shares of a "Qualifying ETF" (as defined in the SIA Letter noted in footnote number 23, 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 MACRO tradeable shares, 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 MACRO tradeable shares be permitted to avail themselves of the exemption provided by Rule 11d1-2. Although the MACRO holding and tradeable trusts are not expected to be registered as investment companies under the 1940 Act, in view of certain relevant similarities between MACRO tradeable shares and ETF shares described above, the Depositor requests that broker-dealers who act as authorized participants for the MACRO holding and tradeable trusts be permitted to rely on the exemption provided by Rule 11d1-2 to ETFs and other registered open-ended investment companies and unit investment trusts which issue redeemable securities. In particular, the Depositor requests that the Commission confirm 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 MACRO tradeable shares 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 exemptive, interpretive and 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,

A handwritten signature in black ink, appearing to read 'Richard F. Kadlick', written in a cursive style.

Richard F. Kadlick