

# WILLKIE FARR & GALLAGHER<sub>LLP</sub>

787 Seventh Avenue  
New York, NY 10019-6099  
Tel: 212 728 8000  
Fax: 212 728 8111

July 1, 2020

Mr. Ted Yu, Chief  
Nicholas Panos, Senior Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2000

Re: Request for Exemptive Relief from Rule 14e-5 under the Securities Exchange Act of 1934 for Funds Operating under the Order Granted to T. Rowe Price Equity Series, Inc. and T. Rowe Price Associates, Inc. and Similar Orders<sup>1</sup>

Dear Messrs. Yu and Panos:

We are writing on behalf of T. Rowe Price Exchange-Traded Fund, Inc. (“**Corporation**”). The Corporation is a Maryland corporation registered as an open-end management investment company under the Investment Company Act of 1940 (“**1940 Act**”) and is advised by T. Rowe Price Associates, Inc. The Corporation requests exemptive relief under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) on behalf of itself, its various series funds, T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF and T. Rowe Price Equity Income ETF (the “**Initial Funds**”), persons or entities engaging in transactions in shares of the funds, including Authorized Participants (defined below) and market makers in the Funds and all funds relying on the Order or on substantially similar orders (together with the Initial Funds, “**Funds**”) from the provisions of Rule 14e-5 of the Exchange Act.<sup>2</sup> The Funds will operate as actively-managed, exchange-

---

<sup>1</sup> On December 10, 2019, the Securities and Exchange Commission approved the exemptive application of T. Rowe Price Equity Series, Inc. and T. Rowe Price Associates, Inc. (“**Applicants**”) and granted an order for relief from specified sections of the 1940 Act in order to operate as an actively-managed, exchange-traded fund (the “**Order**”).

<sup>2</sup> The reference to “all funds relying on the Order” refers to actively-managed, exchange-traded funds operated in reliance on the Order that are managed by T. Rowe Price Associates, Inc., and the reference to “all funds relying on...substantially similar orders” refers to actively-managed, exchange-traded funds managed by a third-party investment manager who

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 2

traded funds (“**ETFs**”) in reliance on exemptive relief from the Securities and Exchange Commission (the “**Commission**” or the “**SEC**”), and each Fund’s common stock (the “**Shares**”) will be listed on a national securities exchange, as defined in Section 2(a)(26) of the 1940 Act, such as the New York Stock Exchange Arca (an “**Exchange**”). Each Fund will file a registration statement on Form N-1A to register the Shares with the Commission.

The Funds will continuously issue and redeem Shares in specified aggregations (each aggregation of Shares, is a “**Creation Unit**”) at net asset value (“**NAV**”).<sup>3</sup> Each Fund will issue and redeem Shares in Creation Units through a broker-dealer registered under the Exchange Act (the “**Distributor**”) acting on an agency basis and serving as the Funds’ “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act. As described below, consistent with other ETFs, transactions in Creation Units for each Fund occur between such Fund and persons, referred to as “**Authorized Participants**,” who create and redeem Shares in Creation Units pursuant to contractual arrangements pertaining to the Corporation and the Funds.<sup>4</sup> The Shares are traded on an Exchange and in the over-the-counter market, and broker-dealers act as market makers in the Shares.

The Funds described herein operate in a manner similar to all other ETFs except, (1) the Funds will not disclose the identities and quantities of the securities and other assets held by a Fund (the “**Portfolio Securities**”) that will form the basis for each Fund’s calculation of NAV at the end of each business day but instead will disclose their portfolio holdings quarterly, as is currently required of other registered investment companies; and (2) the Funds will publish a proxy portfolio, which is a basket of securities that is designed to closely track the daily performance of such Fund’s Portfolio Securities (the

---

licensed the methodology reflected in the Order from Applicants and operate under separate orders applied for and obtained from the Commission that are substantially identical to the Order.

<sup>3</sup> Redeemability of Creation Units is attributable to the fact that the Trust is an open-end management investment company. The term “open-end company” is defined in Section 5(a)(1) of the 1940 Act as a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the 1940 Act defines a “redeemable security” as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately its proportionate share of the issuer’s current net assets, or the cash equivalent. Creation Units are redeemable at NAV. Shares, however, are not individually redeemable. Each Fund, like other ETFs, will rely on exemptive relief obtained from the Commission permitting it, among other things, to register as an open-end management investment company notwithstanding that Shares are redeemable only in Creation Unit sizes. The relief addresses the possible question that arises as to whether the definitional requirements of a “redeemable security” or an “open-end company” under the 1940 Act have been met.

<sup>4</sup> All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant which is either: (a) a “participating party” (*i.e.*, a broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation) or (b) a DTC participant, which in any case has executed an agreement with the Distributor (“**AP Agreement**”). An investor does not have to be an Authorized Participant to transact in Creation Units, but must place a creation or redemption order through an Authorized Participant, which will transact directly with the Fund as principal.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 3

**“Proxy Portfolio”**).<sup>5</sup> The Funds will publish an indicative intraday value (**“INAV”**), which will be calculated by an independent INAV provider and disseminated every fifteen seconds during the Exchange’s core trading session each trading day. The Funds will also provide market participants with other high-quality pricing and hedging information that can be used by market participants to enable effective arbitrage of the Shares and accurately price Shares of the Funds intraday.

Relief under Rule 14e-5 is needed by the Corporation because Authorized Persons and market makers for Shares may be “covered persons” under Rule 14e-5(c)(3)(ii), (iii) and (iv) and, as a result, may not be able to facilitate in-kind creations and redemptions in Shares when Funds hold “Subject securities” as defined in Rule 14e-5(c)(7) (**“Subject securities”**). Similarly, the Corporation and each of the Funds may be “covered persons” under Rule 14e-5(c)(3)(iv) by virtue of their reliance on Authorized Persons and market makers to create and redeem Shares on an in-kind basis when the Fund holds Subject securities and the Authorized Persons and market makers are “covered persons” under Rule 14e-5.

Authorized Participants are broker-dealers and may act as dealer-managers of tender offers in Subject securities or otherwise be subject to Rule 14e-5 as a “covered person,” *e.g.*, because they are acting as an adviser to an offeror in a tender offer for Subject securities and their compensation is dependent upon completion of the tender offer.<sup>6</sup> Funds create and redeem Shares primarily on an in-kind basis. As a result, if a Fund holds Subject securities in its portfolio, an Authorized Participant is required to purchase the Subject securities in the market to contribute to the Fund in order to purchase Shares. Similarly, if a Fund holds Subject securities in its portfolio and an Authorized Participant wishes to redeem Shares, the Authorized Participant would be required to purchase the Subject securities as part of the redemption in exchange for the Shares being redeemed. Such purchases of the Subject securities by Authorized Participants, without relief, may violate Rule 14e-5 when the Authorized Participants are “covered persons.”

---

<sup>5</sup> The Proxy Portfolio will be the Fund’s recently disclosed portfolio holdings or a broad-based securities index (*e.g.*, the S&P 500). Although the Proxy Portfolio may be changed at any time, the expectation is that changes to the Proxy Portfolio will not be made more frequently than quarterly (*e.g.*, in connection with the release of a Fund’s portfolio holdings).

<sup>6</sup> *See also*, Order Granting a Conditional Exemption from Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 15c1-5, 15c1-5 and 14e-5 for Certain Exchange-Traded Funds, Rel. No. 34-87110 (September 25, 2019) (**“Conditional Exemption”**). The Conditional Exemption, like the Corporation’s request hereunder, granted exemptive relief from Rule 14e-5 for ETFs, their various series and Authorized Participants and other persons (such as market makers) who create and redeem shares of the ETFs and who are covered persons under Rule 14e-5 with respect to component securities of the ETF. The Conditional Exemption defined the term “ETF” to mean an exchange-traded fund that operates in reliance on rule 6c-11 under the 1940 Act.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 4

Similarly, market makers enter into in-kind redemptions of Shares, through Authorized Participants, in connection with their market making in Shares. Market makers may be “covered persons” under Rule 14e-5(c)(3)(ii), (iii) and (iv) with respect to “Subject securities”. As is the case for Authorized Participants, market makers require relief in order to carry out the in-kind creation and activity in Shares that is necessary for their market making activities.

The Corporation and its Funds may be “covered persons” under Rule 14e-5(c)(3)(iv) by virtue of conducting in-kind creations and redemptions for Shares with Authorized Participants or market makers that are “covered persons” when the Funds own Subject securities.

In order to ensure that the Corporation and its Funds may continue to conduct in-kind creations and redemption in Shares, the Corporation requests, on behalf of itself, the Funds, the Authorized Participants and market makers that are covered persons, that the Commission grant exemptive relief from Rule 14e-5 under the Exchange Act in connection with transactions that involve “subject securities” and “related securities” (as defined in Rule 14e-5(c)(6) and (7)) included in the “Creation Basket” and/or “Redemption Basket.” Such relief would apply on each business day on which a Fund carries out in-kind creations or redemptions, as discussed below. Without such relief, in situations where an Authorized Participant is a “covered person,” as defined in Rule 14e-5(c)(3), the restrictions of Rule 14e-5 could impede the ability of a Fund to operate as intended and as disclosed in publicly filed documents, which could be detrimental to investors.<sup>7</sup>

The Corporation notes that the Commission granted a conditional exemption from Rule 14e-5 for ETFs that disclose their portfolio holdings each day through their websites.<sup>8</sup> The Corporation and

---

<sup>7</sup> Consistent with the applicable precedent (see note 10 *infra*), the Corporation is the party that is requesting relief from the Commission. Although there is no guarantee of future results, the Corporation believes that the “in-kind” purchase and redemption features of ETFs help facilitate the close correspondence between an ETF’s NAV and market price to the benefit of the ETF and its shareholders. The Corporation and its series, the Funds, therefore have a strong interest in, and are beneficiaries of, the requested relief as it helps ensure that market participants are able to effect creations and redemptions, thereby permitting the Funds to operate as intended. The Corporation further believes that the arbitrage activity described below is facilitated when more market participants are able to participate in the purchase and redemption of Creation Units. Additionally, the Corporation is seeking relief on behalf of itself, when it is a “covered person,” and the Funds, when deemed to be “covered persons,” under Rule 14e-5(c)(3)(iv).

<sup>8</sup> In granting conditional exemption to ETFs that may rely upon Rule 6c-11 under the 1940 Act, the Commission stated, “portfolio transparency, along with the availability of information regarding ETFs through the National Securities Clearing Corporation (“NSCC”), other intermediaries, and the ETF itself, should provide customers engaging in creation or redemption transactions an opportunity to identify or inquire about potential conflicts of interest involving a component security a broker-dealer would otherwise be required to disclose. These requirements should also help customers determine if they should request that their broker-dealer provide any omitted information.” *See* Conditional Exemption, 7.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 5

Funds may not rely on the conditional exemption because the Funds do not publish their portfolio holdings daily, as required by Rule 6c-11. However, the Funds operate in a manner similar to the exemption granted on December 17, 2019 to Fidelity Covington Trust.<sup>9</sup> As a result, the Corporation respectfully requests that the SEC grant the relief requested hereby.

We also believe that the requested relief is consistent with the principles underlying the basket exception in Rule 14e-5(b)(5) (the “**Basket Exception**”)<sup>10</sup> which mitigates against the risk of manipulation, as noted by the Commission in connection with its adoption of Rule 14e-5.<sup>11</sup> The modifications requested herein to the Basket Exception requirements are sufficiently immaterial so as to consistently and effectively mitigate against manipulation of the market in the face of a tender offer involving one of the securities in the basket. In addition, the Commission has previously issued relief substantially similar to that requested herein to certain non-transparent ETFs and exchange-traded managed funds.<sup>12</sup> Therefore, the Corporation does not believe that the relief requested herein raises any new regulatory issues.

- 
- <sup>9</sup> See Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Cynthia Lo Bessette, for Fidelity Covington Trust (Dec. 17, 2019) (“Fidelity Letter”). Since December 1, 2019, the SEC’s Division of Corporation Finance, acting with delegated authority for the SEC, issued six (6) other letters granting exemptive relief from Rule 14e-5, although only the Fidelity Letter was addressed to an actively-managed, semi-transparent exchange-traded fund.
- <sup>10</sup> See Rule 14e-5(b)(5) excepting from the prohibitions of the Rule purchases or arrangements to purchase a basket of securities containing a subject security or a related security if the following conditions are satisfied: (i) The purchase or arrangement to purchase is made in the ordinary course of business and not to facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket.
- <sup>11</sup> Regulation of Takeovers and Security Holder Communications, Exchange Act Release No. 42055 (Oct. 22, 1999) (the “**1999 Release**”) (“We believe that transactions in baskets, following the terms of this exception, provide little opportunity for a covered person to facilitate an offer or for a security holder to exact a premium from the offeror.”).
- <sup>12</sup> See Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, regarding Precidian ETF Trust II (May 22, 2019) (non-transparent ETFs); Letter from Ted Yu to Schiff Hardin LLP, WisdomTree US Quality Shareholder Yield Fund (Feb. 6, 2018); Letter from Ted Yu to Maureen A. Gemma, Vice President, Calvert Research and Management, regarding Calvert Management Series (Jan. 11, 2018) (exchange-traded managed funds); Fidelity Letter, *supra* n.9; Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Suzanne M. Russell, Chapman and Cutler LLP, First Trust Exchange-Traded Fund VIII (Dec. 4, 2019); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Ashley Bergus, American Century ETF Trust (Dec. 12, 2019); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Ryan L. Blaine, American Century ETF Trust (Jan. 21, 2020); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to James A. Brigagliano, regarding Bank of America Securities and index-related derivatives (Jan. 24, 2020); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Suzanne M. Russell, Chapman and Cutler LLP, First Trust Exchange-Traded Fund III (Feb. 5, 2020); Letter from Ted Yu, Chief, Office of Mergers and Acquisitions, Division of Corporation Finance, SEC, to Suzanne M. Russell, Chapman and Cutler LLP, First Trust Exchange-Traded Fund III (April 7, 2020).

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 6

As discussed further below, creations and redemptions with the Funds, which the relief sought will cover, will always be carried out on a basket basis. Such creation and redemption transactions are within the spirit of the Basket Exception and in keeping with its underlying principles and, furthermore, provide little opportunity for an Authorized Participant to facilitate an offer or for a security holder to exact a premium from the offeror, thus warranting relief.

## **I. The Funds**

The investment adviser to the Corporation will be T. Rowe Price Associates, Inc. (the “**Adviser**”) or an entity controlling, controlled by, or under common control with the Adviser. The Adviser and each investment adviser to a Fund is, or will be, registered with the Commission as an investment adviser under Section 203 of the Investment Advisers Act of 1940. The Corporation intends to offer the following Funds that, together with other Funds, would be eligible to rely on the requested relief:

### **A. T. Rowe Price Blue Chip Growth ETF**

The Fund seeks to provide long-term capital growth. Income is a secondary objective. The Fund will invest a substantial portion of its total assets in the common stocks of large and medium-sized blue-chip growth companies listed in the United States.

### **B. T. Rowe Price Dividend Growth ETF**

The Fund seeks dividend income and long-term capital growth primarily through investments in U.S. listed stocks. This Fund will invest a substantial portion of its total assets in stocks, with an emphasis on stocks that have a strong track record of paying dividends or that are expected to increase their dividends over time. When appropriate, the Fund’s portfolio manager may attempt to buy stocks when they are temporarily out of favor or undervalued by the market.

### **C. T. Rowe Price Growth Stock ETF**

The Fund seeks long-term capital growth primarily through investments in U.S. listed stocks. The Fund will invest a substantial portion of its total assets in the common stocks of a diversified group of growth companies. While it may invest in companies of any market capitalization, the Fund generally seeks investments in stocks of large-capitalization companies.

### **D. T. Rowe Price Equity Income ETF**

The Fund seeks a high level of dividend income and long-term capital growth primarily through investments in U.S. listed stocks. The Fund will invest a substantial portion of its total assets in common stocks, with an emphasis on large-capitalization stocks that have a strong track record of paying

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 7

dividends or that are believed to be undervalued. The Fund will typically employ a “value” approach in selecting investments.

## II. Funds’ Operations

### A. Operational Similarities of the Funds to Other ETFs

The Funds, including the Initial Funds, will operate similarly to existing ETFs that have received relief from Rule 14e-5 in those respects that were significant for the relief. The Funds will not sell or redeem individual Shares. Rather, like other ETFs, the Funds will sell and redeem their Shares only in Creation Unit sized aggregations. Specifically, the Funds will issue and redeem Shares only in Creation Units comprised of at least 5,000 Shares, which will be listed on an Exchange and issued at an initial price of \$25 per Share.<sup>13</sup> The combination of intraday liquidity of Shares and the creation and redemption feature of Creation Units is designed to promote arbitrage opportunities.<sup>14</sup> In turn, as arbitrageurs (including Authorized Participants) purchase and redeem Creation Units in response to arbitrage opportunities, it is anticipated that they will enhance the liquidity of the secondary market, which may help mitigate pricing inefficiencies and reduce the likelihood that Shares will trade at a material premium or discount in relation to their NAV.

Transactions in Creation Units will typically take place between the Corporation and Authorized Participants, in the ordinary course of business. Authorized Participants will be broker-dealers who have entered into AP Agreements with the Distributor and the Funds’ transfer agent setting forth the terms under which the Authorized Participants can purchase and redeem Shares in Creation Unit sized aggregations. Creation Units may be issued and redeemed in exchange for the in-kind basket of securities and other assets reflected in the Proxy Portfolio, which is designed to serve as a proxy for the relevant Fund’s Portfolio Securities and/or cash in lieu of such instruments. Each Fund’s custodian, through the NSCC, will make available prior to the opening of business on the applicable Exchange on each business day the Proxy Portfolio, which is the list of securities that Authorized Participants must deliver to purchase a Creation Unit (“**Creation Basket**”) and the list of securities that they are entitled to receive if they redeem a Creation Unit (“**Redemption Basket**”).

---

<sup>13</sup> Terms and provisions governing sales and redemptions of Shares by the Funds will be set forth in the applicable Fund prospectus and statement of additional information, the application for 1940 Act exemptive relief, and the Corporation’s Articles of Incorporation.

<sup>14</sup> Arbitrageurs are expected to stand ready to take advantage of any slight premium or discount in the market price of Shares on the applicable Exchange versus the cost of depositing securities and creating a Creation Unit to be broken down into individual Shares.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 8

The names and quantities of the instruments that constitute the Creation Basket and the Redemption Basket for a Fund will be the same as the Proxy Portfolio, except to the extent that such Fund requires purchases and redemptions to be made entirely or in part on a cash basis or, in a case where such Fund's designated Proxy Portfolio is a broad-based securities index, in which case, the Creation Basket and Redemption Basket may be an existing ETF which tracks the same broad-based securities index. For each Fund, at least 80% of the Proxy Portfolio's security weightings will overlap with the assets of such Fund. Each component of a Fund's portfolio and Proxy Portfolio will be liquid and listed on an exchange (or a U.S. futures exchange, in the case of exchange-traded futures contracts). The securities in the Proxy Portfolio will trade synchronously with the Fund Shares on an exchange. To the extent there is a difference between the NAV of a Creation Unit and the aggregate market value of the Creation Basket or Redemption Basket exchanged for the Creation Unit, the party conveying the lower value will pay to the other an amount in cash equal to that difference.

## **B. Portfolio Holdings Disclosure**

Although the Funds will not disclose their Portfolio Securities on a daily basis, they will provide substantial transparency into their holdings sufficient to promote active arbitrage. The Funds will disclose their Portfolio Securities in full at least once quarterly, with a lag of not more than 60 days, in compliance with the requirements applicable to open-end investment companies.

The Funds will publish the Proxy Portfolio and other material information in connection with the portfolio daily. Specifically, the Proxy Portfolio will be disclosed on a daily basis and will be used as the Creation Basket and Redemption Basket that Authorized Participants will use to purchase or redeem Shares from a Fund. In addition to publication on a daily basis of the Proxy Portfolio, each Fund will also disclose on its website each day the Daily Metrics<sup>15</sup> of such Fund. Each Fund's calculation agent will also publish the INAV every 15 seconds throughout each trading day. The INAV calculation agent will receive the Fund's actual portfolio holdings under a confidentiality arrangement.

---

<sup>15</sup> The Daily Metrics are comprised of: (a) Portfolio Overlap information (representing the securities overlapping between the Fund and its Proxy Portfolio); (b) Daily Deviation information (representing the difference in performance between the Fund and its Proxy Portfolio); (c) Tracking Error information (representing the difference in value between the Fund and its Proxy Portfolio over time); and (d) the Empirical Percentile (representing the likelihood of certain performance differences between the Fund and its Proxy Portfolio based on past performance differences) (collectively, "**Daily Metrics**").



Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 9

### III. Legal Analysis under Rule 14e-5

Rule 14e-5 was originally promulgated as Rule 10b-13 under the Exchange Act to safeguard the interests of persons who sell their securities in response to a tender offer.<sup>16</sup> Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging to purchase Subject securities or any securities immediately convertible into, exchangeable for, or exercisable for subject securities (“**related securities**”) except as part of such tender offer. The term “covered person” includes, among others, any advisor to the offeror and its affiliates whose compensation is dependent on the completion of the tender offer, a dealer-manager of a tender offer and any person acting, directly or indirectly, in concert with the offeror or other covered persons in connection with any purchase or arrangement to purchase any subject securities. Therefore, the prohibitions of Rule 14e-5 may apply to Authorized Participants who are broker-dealers and acting as dealer-managers for or advisors to participants in tender offers, the Funds, and any legal entity of which the Funds are a series. As a result, the Corporation also is seeking relief in the event it or any of the Funds may be deemed to be a “covered person” by virtue of the AP Agreements pertaining to the Corporation or the Funds.<sup>17</sup>

In order to address situations in which an Authorized Participant acts as a dealer-manager of or advisor for a tender offer or otherwise is a covered person under Rule 14e-5 in respect to the tender offer (other than as a result of being the offeror or an affiliate of the offeror), and a subject security or a related security is part of a group of securities that is received by a Fund when it issues a Creation Unit or part of a group of securities that a Fund distributes when it redeems a Creation Unit (*i.e.*, the Creation Basket and the Redemption Basket, respectively), the Corporation respectfully requests that the Commission grant an exemption from Rule 14e-5 as it applies to such Authorized Participants for the Funds. The exemption would apply to the Funds, the Corporation, the Authorized Participants and any other persons who create and redeem Shares of the Funds (or any Fund) in Creation Units pursuant to a contractual arrangement with the Corporation, and who are covered persons with respect to a tender offer involving a Fund’s component securities. The exemption would permit such persons to (i) redeem Fund Shares in Creation Unit sizes for a Redemption Basket that may include a subject security or related security, (ii) engage in secondary market transactions with respect to Fund Shares after the first public announcement of the tender offer and during such tender offer given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, and (iii) make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to Funds to purchase one or more Creation Units

---

<sup>16</sup> Exchange Act Release No. 8712 (October 8, 1969) (the “**1969 Adopting Release**”). In this regard, the 1969 Adopting Release noted that “[w]hen securities are purchased for a consideration greater than that of the tender offer price, this operates to the disadvantage of the security holders who have already deposited their securities and who are unable to withdraw them in order to obtain the advantage of possible resulting higher market prices.”

<sup>17</sup> Applicants do not seek relief in situations where they are deemed to be “covered persons” by virtue of being an offeror or an affiliate of the offeror.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 10

of Fund Shares. With respect to redemptions, the Corporation notes that the acquisition of individual securities by means of redemptions of Shares would be impractical and extremely inefficient in view of the relatively small number of Shares or units of any one security included in a Redemption Basket and the requirement that a minimum number of Shares (*i.e.*, a Creation Unit) be redeemed. Further, in no case would redemptions of Shares or secondary market transactions by Authorized Participants be effected for the purpose of facilitating a tender offer. Accordingly, purchases and redemptions of Shares under the circumstances described would not result in the abuses at which Rule 14e-5 is directed.

In addition, the Corporation requests exemptive relief in connection with purchases of Creation Units of Shares by an Authorized Participant acting as a dealer-manager of a tender offer or otherwise as a covered person in respect to such tender offer, other than as a result of being the offeror or an affiliate of the offeror. In this regard, in connection with purchasing Creation Units pursuant to the terms of its AP Agreement, an Authorized Participant may seek to purchase in the secondary market securities comprising a Creation Basket that includes, with respect to a tender offer for which it acts as a dealer-manager, adviser or otherwise as a covered person under Rule 14e-5, subject securities or related securities. The Corporation acknowledges that the Basket Exception provides an exception to its prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) the purchase or arrangement is made in the ordinary course of business and not to facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket.

As indicated by the Commission in the release replacing former Rule 10b-13 with Rule 14e-5,<sup>18</sup> transactions in baskets in accordance with the Basket Exception provide little opportunity for a covered person to facilitate an offer or for a security holder to exact a premium from the offeror.<sup>19</sup> Given that the purchases and redemptions of Creation Units of the Funds in general involve baskets of securities, Authorized Participants acting as dealer-managers of tender offers for relevant securities (or who otherwise are covered persons) should, in many cases, be able to rely on the Basket Exception in purchasing Creation Units of Shares. The Proxy Portfolio is generally expected to exceed 20 securities. From time to time, however, a change in the composition of the Proxy Portfolio of a Fund may result in the Proxy Portfolio (which establishes the Creation Basket and the Redemption Basket) containing less than 20 securities or covered securities and/or related securities comprising more than 5% of the value of the Proxy Portfolio. For example, a liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in the Proxy Portfolio to fall below 20 and/or could cause covered securities and related securities to comprise

---

<sup>18</sup> See 1999 Release, *supra* note 11.

<sup>19</sup> As discussed in 1999 Release, “facilitation of an offer” includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking. In this regard, the Corporation believes that it would be inefficient to facilitate a tender offer in a particular security by means of purchasing all of the securities in a Basket.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 11

more than 5% of the value of the Proxy Portfolio. Additionally, as a result of fluctuations in the market value of the securities in the Proxy Portfolio, covered securities and related securities could, at times, comprise more than 5% of the value of the Proxy Portfolio. This composition would result in the unavailability of the Basket Exception for an Authorized Participant acting as a dealer-manager (or other type of covered person, such as an adviser to the offeror) of a tender offer for the applicable securities and, in particular, may preclude an Authorized Participant from being able to rely on the Basket Exception.

The relief would be subject to the following conditions:

- (1) no purchases of Subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer or otherwise as “covered persons” under Rule 14e-5 (other than as a result of Rule 14e-5(c)(3)(i)) would be effected for the purpose of facilitating a tender offer;
- (2) if there is a change in the composition of a Fund’s Proxy Portfolio and a broker-dealer who is a covered person is unable to rely on the exception found in Rule 14e-5(b)(5) for basket transactions (the “Basket Exception”) because (i) the basket of subject securities or related securities contains fewer than 20 securities or (ii) the subject securities and related securities make up more than 5% of the value of the Proxy Portfolio, then any purchases of a Proxy Portfolio component by such broker-dealer during a tender offer will be effected for the purpose of adjusting a basket of securities in the ordinary course of its business and not for the purpose of facilitating a tender offer; and
- (3) except for the relief specifically granted herein, any broker-dealer acting as a dealer- manager of a tender offer or who is a “covered person” under Rule 14e-5(c)(3) (other than as a result of Rule 14e-5(c)(3)(i)) will comply with Rule 14e-5.

Relief would be necessary in order to permit the Corporation, the Funds, such Authorized Participants, market makers and others to engage in in-kind creation and redemption transactions between the public announcement of a tender offer and its expiration, thereby permitting the Funds to operate as intended for the benefit of their holders and as disclosed in publicly filed documents. This extension of the Basket Exception would accommodate a potential factual circumstance associated with the operation of the Funds and would be consistent with the rationale underlying the adoption of the Basket Exception. The Corporation notes, in particular, that purchases would not be effected for the purpose of facilitating a tender offer. The conditions applicable to the relief will ensure that Authorized Participants and other recipients of the relief do not effect creation or redemption transactions during the relevant tender offer period in an effort to facilitate the tender offer.

Messrs. Ted Yu and Nicholas Panos  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
July 1, 2020  
Page 12

#### IV. Conclusion

Based on the foregoing, we respectfully request that the Commission and the Commission staff grant the requested relief to allow the Corporation, the Funds, the Authorized Participants and any other persons who create and redeem Shares of the Funds and who are covered persons with respect to a tender offer involving a Fund's Component securities to: (i) redeem Fund Shares in Creation Unit sizes for a Redemption Basket that may include a subject security or related security; (ii) engage in secondary market transactions with respect to Fund Shares after the first public announcement of the tender offer and during such tender offer given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities; and (iii) make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Fund Shares. The form of relief requested is substantially similar to those actions that the Commission and the Commission staff have taken in similar circumstances for other ETFs that do not disclose their portfolio holdings daily. If the Commission or the Commission staff believes that a different format is appropriate (for example, a no-action position rather than an exemption), we would appreciate the opportunity to revise this request for relief accordingly.

Thank you for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to call me at 212-728-8250.

Sincerely,

DocuSigned by:  
  
495C7AA7E0214DB...

P. Georgia Bullitt  
Partner  
Willkie Farr & Gallagher LLP

cc: Darrell L. Braman, Esq.  
Fran Pollack-Matz, Esq.  
Sonia Kurian, Esq.  
T. Rowe Price Associates, Inc.