

Advisers Act of 1940 (“Advisers Act”), will serve as investment adviser to the ET50 Fund. The Adviser may enter into sub-advisory agreements with one or more investment advisers (“Sub-Advisers”) to manage the assets of the ET50 Fund. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the principal underwriter of the ET50 Fund.

2. The applicants are currently permitted to offer series of the Trust in reliance on the Prior Order (such series, the “Funds”) provided that the Funds are based on equity securities indices for which no entity that compiles, creates, sponsors, or maintains the indices (each such entity, an “Index Provider”) is or will be an “affiliated person” (as such term is defined in section 2(a)(3) of the Act), or an affiliated person of an affiliated person, of the Trust or a Fund, the Adviser or any Sub-Adviser to or promoter of a Fund or of the Distributor.

3. The ET50 Index is a subset of the FTSE Environmental Index Series and is designed to represent the performance of the top 50 global environmental technology companies ranked by full market capitalization. FTSE Group (“FTSE”) is responsible for the calculation and management of the ET50 Index. Impax Asset Management Ltd. (“Impax”) identifies companies as environmental technology companies eligible for inclusion in the ET50 Index, subject to approval by the independent FTSE Environmental Markets Advisory Committee (the “Committee”).<sup>3</sup> Applicants state that Impax may be deemed an Index Provider to the ET50 Index if, due to its activities with respect to the ET50 Index, it is deemed to be compiling, creating, sponsoring or maintaining the ET50 Index. In addition, applicants state that Impax may be deemed an affiliated person of an affiliated person of the Trust.<sup>4</sup>

<sup>3</sup> The Committee consists of environmental technology and investment professionals appointed by FTSE in consultation with Impax. Among its duties, the Committee is charged with approving any changes to the rules-based methodology for the ET50 Index (“Index Rules”).

<sup>4</sup> Impax serves as the investment adviser to a series of another registered investment company that is advised by the Adviser (“Trust II”). The Trust and Trust II are overseen by identical boards of trustees and officers. Applicants state that Impax may be deemed an affiliated person of an affiliated person of the Trust if the Trust and Trust II are deemed to be under common control by virtue of having the Adviser as their common investment adviser and/or by having identical boards of trustees and officers. Other than as stated in this footnote, neither Impax nor FTSE is or will be (i) an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated

person, of the ET50 Fund or (ii) an investment adviser, promoter or principal underwriter of the ET50 Fund, or an affiliated person of such persons.

4. Applicants note that the restriction that the Prior Order applies only to index-based series for which there is no affiliated Index Provider is designed to address potential conflicts of interest. Applicants state that the potential conflicts relating to the possible manipulation of the ET50 Index are addressed through the transparency of the Index Rules. Applicants state that FTSE maintains a publicly available Web site on which it publishes the basic concept of the ET50 Index and discloses the Index Rules, in addition to the component securities and weighting of the ET50 Index. Applicants state that FTSE, as the entity that implements the Index Rules, calculates and maintains the ET50 Index, and calculates and disseminates the ET50 Index value, will function as an unaffiliated calculation agent. Applicants state that, although FTSE may change the Index Rules in the future, any change to the Index Rules would not take effect until FTSE has given the public at least 60 days prior written notice of the change, disclosed on FTSE’s Web site. FTSE reconstitutes the ET50 Index no more frequently than on a monthly basis.

5. Applicants state that Impax will have no responsibility for the management of the ET50 Fund. Applicants state that the potential conflicts of interest arising from the possibility that Impax may be deemed an affiliated Index Provider will have no effect on the operation of the ET50 Fund because Impax, the Adviser, and any Sub-Adviser each has adopted or will adopt policies and procedures designed to address such conflicts of interest (“Policies and Procedures”). Among other things, the Policies and Procedures will be designed to limit or prohibit communication between the employees of Impax and the employees of the Adviser (and any Sub-Adviser, if applicable). The Policies and Procedures prohibit Impax from disseminating non-public information about the ET50 Index, including potential changes to the Index Rules to, among others, the employees of the Adviser and any Sub-Adviser responsible for management of the ET50 Fund. The Adviser and any Sub-Adviser will adopt Policies and Procedures that prohibit personnel responsible for the management of the ET50 Fund from sharing any non-public information about the management of the ET50 Fund

person, of the ET50 Fund or (ii) an investment adviser, promoter or principal underwriter of the ET50 Fund, or an affiliated person of such persons.

with any personnel of Impax. Neither the Adviser nor any Sub-Adviser will have a preferential ability to influence the index methodology determined by FTSE or the Committee over other institutional investors, nor will the Adviser or any Sub-Adviser seek to influence the index methodology determined by FTSE or the Committee in a way that would disproportionately benefit the Adviser or any Sub-Adviser.

6. The Adviser has and any Sub-Adviser will have, pursuant to rule 206(4)–7 under the Advisers Act, written Policies and Procedures designed to prevent violations of the Advisers Act and the rules under the Adviser Act. The Adviser has adopted and any Sub-Adviser will adopt, a Code of Ethics as required under rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, and Policies and Procedures to monitor and restrict securities trading by certain employees.

7. Applicants state that the ET50 Fund will operate in a manner identical to the operation of the Funds under the Prior Order, except as specifically noted by applicants (and summarized in this notice). The ET50 Fund will comply with all of the terms and conditions of the Prior Order as amended by the present application. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9120; 34–61982; File No. 265–25–04]

### Investor Advisory Committee

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting of SEC Investor Advisory Committee.

**SUMMARY:** The Securities and Exchange Commission Investor Advisory Committee is providing notice that it will hold a public meeting on Monday, May 17, 2010, in the Multipurpose Room, L–006, at the Commission’s main offices, 100 F Street, NE., Washington, DC. The meeting will begin at 9 a.m. (EDT) and will be open to the public. The Committee meeting will be webcast on the Commission’s Web site at <http://www.sec.gov>. Persons needing

special accommodations to take part because of a disability should notify a contact person listed below. The public is invited to submit written statements to the Committee.

The agenda for the meeting includes: (i) Remarks by Dan Ariely, behavioral economist, on investor reaction to disclosure; (ii) update on recommendations previously adopted by the Committee; (iii) briefing on the Investor as Owner Subcommittee's environmental, social, and governance disclosure workplan; (iv) update on certain issues involved in financial reform legislation; (v) discussion of fiduciary duty, in the context of investment advisers and registered broker-dealers, including a presentation by SEC staff; (vi) discussion with an expert panel on mandatory arbitration; (vii) discussion of money market funds and the issue of net asset value ("NAV"), including a presentation by SEC staff; (viii) recommendation by Investor Education Subcommittee of an investor education campaign; (ix) reports from Subcommittees on other activities; and (x) discussion of next steps and closing comments.

**DATES:** Written statements should be received on or before May 10, 2010.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-25-04 on the subject line.

#### *Paper Comments*

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File No. 265-25-04. This file number should be included on the subject line if e-mail is used. To help us process and review your statements more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/spotlight/investoradvisorycommittee.shtml>). Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted

without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### **FOR FURTHER INFORMATION CONTACT:**

Kayla J. Gillan, Deputy Chief of Staff, Office of the Chairman, at (202) 551-2100, or Owen Donley, Chief Counsel, Office of Investor Education and Advocacy, at (202) 551-6322, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6561.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, § 10(a), Kayla J. Gillan, Designated Federal Officer of the Committee, has approved publication of this notice.

Dated: April 26, 2010.

**Elizabeth M. Murphy,**  
*Committee Management Officer.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61975; File No. S7-17-09]

### **Order Extending and Modifying Temporary Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comment**

April 23, 2010.

#### **I. Introduction**

Over the past year, the Securities and Exchange Commission ("Commission") has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets, including actions<sup>1</sup> designed to address concerns

<sup>1</sup> See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) and Securities Exchange Act Release No. 61973 (Apr. 23, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG) (hereinafter, the "July Eurex Order"); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) and Securities Exchange Act Release No. 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589

related to the market in credit default swaps ("CDS").<sup>2</sup> The over-the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.<sup>3</sup>

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap

(Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS; these exemptions expired on March 24, 2010. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

<sup>2</sup> A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

<sup>3</sup> See generally actions referenced in note 1, *supra*.