



**Information Circular 10-293**

Date: May 20, 2010

To: ETP Holders

From: James C. Yong  
Chief Regulatory Officer

Re: ESG SHARES KLD NORTH AMERICA SUSTAINABILITY INDEX ETF TO BEGIN TRADING ON NSX

Pursuant to Regulatory Circular 08-005, we are issuing this Information Circular to advise you that the following security of the exchange-traded fund discussed herein (the "Fund") has been approved for trading on the National Stock Exchange, Inc. ("NSX" or the "Exchange") as a UTP Derivative Securities product pursuant to NSX Rule 15.9:

**Security:** (the "Shares")

**Symbol:**

ESG Shares KLD North America Sustainability Index ETF

**NASI**

**Commencement of Trading:** May 21, 2010

**Issuer:** Pax World Fund Trust II

**Issuer Website:** [www.egsshare.com](http://www.egsshare.com)

**Primary Listing Exchange:** NYSE Arca

**Primary Exchange Circular:** RB-10-67 (May 19, 2010)

**Issuer Registration Statement:** Nos. 811-22187 and 333-156141

The purpose of this information circular is to outline various rules and policies that will be applicable to trading in this new product pursuant to the Exchange's unlisted trading privileges, as well as to provide certain characteristics and features of the Shares. For a more complete description of the Issuer, the Shares and the underlying market instruments or indexes, visit the Issuer Website, consult the prospectus or prospectuses available on the Issuer Website (the "Prospectus"), examine the Issuer Registration Statement or review the most current information bulletin issued by the Primary Listing Exchange (which as of the date hereof is set forth above as the "Primary Exchange Circular"). The Issuer Website, the Prospectus, the Issuer Registration Statement and the Primary Exchange Circular are hereafter collectively referred to as the "Issuer Disclosure Materials."

The Primary Exchange Circular cited above contains the following information:

## **Background Information on the Fund**

As more fully explained in the Registration Statement (Nos. 811-22187 and 333-156141) for Pax World Fund Trust II, the Trust is an open-end management investment company registered under the Investment Company Act of 1940, as amended ("1940 Act"). The Fund is a registered investment company and an exchange-traded "index fund."

The Fund seeks investment returns that closely correspond to the price and yield performance, before fees and expenses, of the FTSE KLD North America Sustainability<sup>SM</sup> Index. The Index consists of equity securities of issuers in North America that meet specific environmental, social and governance ("ESG") criteria developed by KLD Research & Analytics, Inc. ("KLD"). The Fund's investment objective may be changed by the board of trustees without a vote of shareholders.

The Fund employs a "passive management" – or indexing – investment approach designed to track the performance of the FTSE KLD North America Sustainability<sup>SM</sup> Index. Under normal circumstances, the Fund invests more than 80% of its total assets in the component securities of the Index and in Depositary Receipts representing the component securities of the Index. The Fund uses a replication strategy to seek to achieve its investment objective, which means that it generally will hold all of the component securities of the Index in approximately the same proportions as they are represented in the Index. The Fund may use a representative sampling strategy with respect to the Index when a replication strategy might be detrimental, such as when a security becomes temporarily illiquid, unavailable or less liquid. The Fund also may invest up to 20% of its total assets in certain futures, options and swap contracts, cash and cash equivalents, and stocks not included in its Index, but which Pax believes will help the Fund track the price and yield performance of its Index. Such securities and other financial instruments will be evaluated by Pax for satisfaction of Pax's ESG criteria.

The Index measures the performance of equity securities of issuers organized or operating in North America, selected initially and adjusted annually using a proprietary method of KLD. The selection process takes into account ESG performance, as well as sector and size. The eligible universe for the Index is the set of issuers that comprise the top 75% of the market capitalization of each sector in each country of the S&P North America BMI. KLD evaluates the ESG performance of each issuer in the eligible universe and ranks issuers against sector peers. To generate comparative sector rankings, KLD identifies key ESG performance indicators for each sector and weights them. The Index consists of the highest-ranked issuers that make up approximately 50% of the eligible universe, meaning that approximately 37.5% (50% of 75%) of the market capitalization of each sector of the S&P North America BMI is represented after application of KLD's ESG criteria at reconstitution. Due to various constraints, including issuer market capitalization, not all sectors will hold exactly 37.5% of the available market capitalization. The eligible universe for the Index consists of companies from the United States and Canada. As of June 30, 2009, the Index included companies with market capitalizations that ranged from \$161.2 million to \$157.6 billion.

ALPS Distributors, Inc. serves as distributor and principal underwriter of the Shares. The State Street Bank and Trust Company serves as the administrator, custodian, and transfer agent.

As described more fully in the Fund's prospectus ("Prospectus") and Statement of

Additional Information (“SAI”), the Fund issues and redeems ETF Shares only in large blocks of 25,000 ETF shares (each, a “Creation Unit”). To purchase or redeem a Creation Unit, an investor must be an Authorized Participant or must trade through a broker that is an Authorized Participant. An Authorized Participant is a participant in the Depository Trust Company that has executed a Participant Agreement with the fund’s Distributor.

Dividends from net investment income are declared and paid at least annually by the Fund.

The Depository Trust Company (“DTC”) serves as securities depository for the Shares, which may be held only in book-entry form; stock certificates will not be issued. DTC, or its nominee, is the record or registered owner of all outstanding Shares.

The NAV per Share of the Fund will be determined as of the close of trading (normally, 4:00 p.m. Eastern Time (“ET”)) on each day that the New York Stock Exchange (“NYSE”) and NYSE Arca are open for business (a “Business Day”). NAV will be available from the Distributor and is also available to National Securities Clearing Corporation (“NSCC”) participants through data made available from NSCC.

The Fund’s Registration Statement describes the various fees and expenses for the Fund’s Shares. For a more complete description of the Fund and the Index, visit [www.egsshare.com](http://www.egsshare.com)

### **Principal Risks**

Interested persons are referred to the Prospectus for a description of risks associated with an investment in the Shares. These risks include index risk, foreign markets risk and the risk that a Fund’s return may not match the return of its index for a number of reasons including the incursion by a Fund of operating expenses and costs not applicable to its index. In addition, as noted in the Prospectus, the Shares may trade at market prices that may differ from their NAV. The NAV of the Shares will fluctuate with changes in the market value of the Fund’s holdings. The market prices of the Shares will fluctuate in accordance with changes in NAV as well as the supply and demand for the Shares.

### **Delivery of a Prospectus**

Consistent with the requirements of the Securities Act and the rules thereunder, investors purchasing Shares in the initial public offering and anyone purchasing Shares directly from a Fund (by delivery of the designated securities) must receive a Prospectus. In addition, ETP Holders are required to deliver a Prospectus to all purchasers of newly-issued Shares (i.e., during the initial public offering). ETP Holders purchasing shares from a Fund for resale to investors will deliver a Prospectus to such investors.

Prospectuses may be obtained through the Fund’s website. The Prospectus does not contain all of the information set forth in the Registration Statement (including the exhibits to the Registration Statement), parts of which have been omitted in accordance with the rules and regulations of the Commission.

Upon request of a customer, ETP Holders shall also provide a copy of the Prospectus.

## **Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations**

The Commission has issued letters dated November 21, 2005 and October 24, 2006 (together, the "No-Action Letters") granting exemptive, interpretive and no-action relief from certain provisions of and rules under the Securities Exchange Act of 1934 for exchange-traded funds listed and traded on a registered national securities exchange that meet certain criteria. ETP Holders are referred to the full text of the No-Action Letters, available at [www.sec.gov](http://www.sec.gov), for additional information.

**BECAUSE WHAT FOLLOWS IS ONLY A SUMMARY OF THE RELIEF OUTLINED IN THE NO-ACTION LETTER(S) REFERENCED ABOVE, THE EXCHANGE ADVISES INTERESTED PARTIES TO CONSULT THE NO-ACTION LETTER(S) FOR MORE COMPLETE INFORMATION REGARDING THE MATTERS COVERED THEREIN AND THE APPLICABILITY OF THE RELIEF GRANTED IN RESPECT OF TRADING IN THE SHARES. INTERESTED PARTIES SHOULD ALSO CONSULT THEIR PROFESSIONAL ADVISORS.**

### **Regulation M Exemptions**

Generally, Rules 101 and 102 of Regulation M prohibit any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of the Rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities.

The Commission issued a No-Action Letter by which persons participating in a distribution of shares of a fund may engage in secondary market transactions in such shares during their participation in such a distribution, despite the requirements of from Rule 101 under Regulation M. In addition, the SEC has permitted persons who may be deemed to be participating in the distribution of shares of a fund (i) to purchase securities for the purpose of purchasing creation unit aggregations of fund shares and (ii) to tender securities for redemption in Creation Unit Aggregations. Further, the Commission has clarified that the tender of fund shares to the Funds for redemption does not constitute a bid for or purchase of any of the Funds' securities during the restricted period of Rule 101. The Commission has issued a No-Action Letter relating to paragraph (e) of Rule 102 under Regulation M to allow the redemption of fund shares in creation unit aggregations during the continuous offering of shares.

### **SEC Rule 14e-5**

The Commission has permitted any person acting as a dealer-manager of a tender offer for a component security of funds (1) to redeem fund shares in creation unit aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase fund shares during such tender offer.

### **Section 11(d)(1); SEC Rules 11d1-1 and 11d1-2**

Section 11(d)(1) of the 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. The Commission has clarified that Section 11(d)(1) does not apply to broker-dealers that are not authorized participants (and, therefore, do not create creation unit aggregations) that engage in both proprietary and customer transactions in shares of a fund in the secondary market, and for broker-dealer authorized participants that engage in creations of creation unit aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an authorized participant) does not, directly or indirectly, receive from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of a fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830 (l)(5)(A), (B) or (C). See letter dated November 22, 2005 from Brian A. Bussey, Assistant Chief Counsel, SEC Division of Market Regulation, to Barclays Global Investors, N.A., dated November 22, 2005. The Commission has issued a No-Action Letter under Section 11(d)(1) of the Act stating that broker-dealers may treat shares of a fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

#### **Rule 10b-17**

The Commission has granted an exemption from the requirements of Rule 10b-17 with respect to transactions in ETF shares, for ETFs registered as open-end management investment companies.

#### **NSX Rules Applicable to Trading in the Shares**

The Shares are considered equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares are also a UTP Derivative Securities product as specified in NSX Rule 15.9, and as such are subject to the additional provisions specific to that NSX Rule. In particular, ETP Holders are reminded of their obligations under the following NSX Rules:

1. **Trading Hours:** This product will trade during the regular trading hours of the Exchange (between 9:30 am to 4:00 pm ET), during pre-market hours (8:00 am to 9:29:59 am ET) and during post-market hours (4:00:01 pm to 6:30 pm ET). Please note that trading in the Shares during the Exchange's pre-market and post-market hours may result in additional trading risks which include: (1) lower liquidity in the Opening or Late Trading Sessions may impact pricing, (2) higher volatility in the Opening or Late Trading Sessions may impact pricing, (3) wider spreads may occur in the Opening or Late Trading Sessions. The minimum trading increment is \$.01.

2. **Recommendations To Customers:** NSX Rule 3.7 provides that the ETP Holder shall use due diligence to learn the essential facts relative to every customer prior to trading the Shares or recommending a transaction in the Shares that an investment in the Shares is suitable for the customer.

3. **Product Description:** In the event that a Fund relies upon an order by the

Securities and Exchange Commission exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and makes available a written product description, NSX Rule 15.9B(3)(c) requires that ETP Holders shall provide all purchasers of a series of exchange-traded funds (“ETFs”) a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, the ETP Holders shall include a written description with any sales material relating to a series of ETFs that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to the series of ETFs as an investment vehicle must include a statement substantially in the following form:

“A circular describing the terms and characteristics of [*the series of ETFs*] has been prepared by the [*open-ended management investment company name*] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [*the series of ETFs*].”

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase a series of ETFs for such omnibus account will be deemed to constitute an agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to the ETP Holder under this Rule.

4. Customer Requests for a Prospectus: NSX Rule 15.9B(3)(d) provides that, upon request of a customer, an ETP Holder shall provide a prospectus for the particular series of UTP Derivative Securities.

5. Trading Halts: NSX Rule 15.9B(4) provides that, in addition to the Exchange’s authority to suspend or halt trading under NSX Rules 11.20 (Trading Halts Due To Extraordinary Market Volatility), 12.11 (Trading Suspensions) and 15.7 (Suspension and/or Delisting By Exchange), if a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument and the listing market halts trading in the product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in that product on the Exchange. The Shares will be traded following a trading halt in accordance with Interpretations and Policy .03 of NSX Rule 11.20.

In addition, for a UTP Derivative Securities product where a net asset value is disseminated, if the primary listing exchange notifies the Exchange that the net asset value is not being disseminated to all market participants at the same time, the Exchange will immediately halt trading in such security. The Exchange may resume trading in the UTP Derivative Security only when the net asset value is disseminated to all market participants at the same time or trading in the UTP Derivative Security resumes on the listing market.

**THIS INFORMATION CIRCULAR IS NOT A STATUTORY PROSPECTUS. ETP HOLDERS SHOULD CONSULT THE ISSUER DISCLOSURE MATERIALS (AS DEFINED ABOVE) FOR ALL RELEVANT INFORMATION RESPECTING THE SHARES.**

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Inquiries regarding this Information Circular should be directed to James C. Yong, Chief Regulatory Officer, at (312) 786-8893.