

**Barclays Global Fund Advisors  
45 Fremont Street  
San Francisco, California 94105**

February 28, 2008

**VIA ELECTRONIC FILING**

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Enhanced Disclosure and New Prospectus Delivery Option for Registered  
Open-End Management Investment Companies, Release No. IC-28064,  
File No. S7-28-07

Dear Ms. Morris:

Barclays Global Fund Advisors<sup>1</sup> (“BGFA”) welcomes the opportunity to comment on the above-referenced release (the “Release”) issued by the Securities and Exchange Commission (the “Commission” or “SEC”) regarding proposed amendments (the “Proposal”) to the form used by open-end investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) to offer their securities under the Securities Act of 1933 (the “Securities Act”). BGFA generally supports the Proposal. BGFA encourages the Commission’s desire to highlight prospectus information that is most critical for prospective investors to understand, as well as the Commission’s concept of using the Internet as a tool for making prospectus and other fund information widely and easily available for interested persons. BGFA, however, questions certain aspects of the Proposal.

BGFA manages over 150 iShares® brand exchange traded funds (“ETFs”) that are registered open-end investment companies, as well as conventional mutual funds. This letter focuses on the application of the Proposal to ETFs. Part I provides a brief overview of ETFs and Part II discusses ways in which we believe the proposed amendments may be modified in order to ensure that ETFs and their shareholders will benefit from this new disclosure regime.

**I. EXCHANGE TRADED FUNDS**

Since their advent in 1993, ETFs have emerged as an increasingly popular investment option for retail and institutional investors. As of year-end 1997, 2002 and 2007, total ETF assets equaled approximately \$6.7 billion, \$102.1 billion and \$608.4 billion, respectively.<sup>2</sup>

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<sup>1</sup> BGFA is a wholly-owned subsidiary of Barclays Global Investors, N.A. (“BGI”). BGI, together with its affiliates and subsidiaries, is one of the world’s largest asset managers. BGI is a majority-owned indirect subsidiary of Barclays Bank PLC.

<sup>2</sup> Source: Investment Company Institute Exchange-Traded Asset Reports, publicly available at <http://www.ici.org/stats/etf>.

An ETF is an open-end investment company designed to trade on a stock exchange.<sup>3</sup> ETFs combine key features of traditional mutual funds and individual stocks. Existing ETFs generally represent portfolios of securities that track specific stock or bond indices, similar to traditional index funds. Unlike traditional index funds, however, ETFs trade intraday on stock exchanges at market-determined prices and investors can employ the same trading strategies used with stocks. As discussed below, ETFs are subject to exemptive relief from certain provisions of the 1940 Act.<sup>4</sup>

## II. APPLICATION OF THE RELEASE TO EXCHANGE TRADED FUNDS

The Proposal would require certain summary information to be disclosed in a prescribed order at the front of the prospectus. The Release notes that “[w]hile a fund may continue to include information in the prospectus that is not required, a fund may not include any such additional information in the summary section of the prospectus.”<sup>5</sup> The Proposal would also allow mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act to be satisfied by delivery of the summary information rather than the full prospectus. BGFA shares the Commission’s desire to assist mutual fund investors by simplifying disclosures and making it easier to compare one mutual fund investment with another. To achieve this goal, it is important to focus on the types of information most relevant to an investor in making an investment decision. We sympathize with the Commission’s desire to standardize the information required in a summary prospectus in order to enhance comparability of information among funds, but question whether the complete standardization envisioned by the Proposal might in practice detract from the disclosure made to investors in non-traditional open-end fund products such as ETFs.<sup>6</sup> Critically, there are a few ETF-specific items that are particularly relevant to ETF investors and need to be addressed in order to provide ETF sponsors with the ability to properly draft and assemble summary prospectuses.

BGFA is concerned that the summary information required – which may not be supplemented – is not well-tailored to ETFs. The summary information includes information that may be less relevant to ETF investors than investors in conventional open-end funds, and does not include other information that is arguably indispensable to ETF investors. The Commission’s desire to limit the information that may appear in the summary prospectus may therefore result in less, rather than more, clarity and undercut ETF sponsors’ willingness to satisfy prospectus delivery obligations by delivery of summary information.

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<sup>3</sup> Some ETFs may be organized as unit investment trusts rather than open-end investment companies.

<sup>4</sup> ETF exemptive orders generally relieve ETFs from complying with two elements of the 1940 Act regarding redeemability of shares and certain affiliated transaction prohibitions. The exemptive relief applies to the definition of “open-end investment company” and Section 22(d) of the Investment Company Act of 1940, which would otherwise require an ETF to redeem all shares at NAV each business day. The exemptive orders permit an ETF to redeem only shares tendered for redemption in large blocks by institutional investors known as “Authorized Participants”, and to do so through in kind, rather than cash, transactions. In addition, Section 17(a) of the 1940 Act prohibits a fund from engaging in principal transactions with an “affiliate”. The exemptive orders permit an ETF to engage in principal transactions with Authorized Participants if, but only if, the Authorized Participants would be deemed “affiliates” solely through ownership of ETF shares (i.e., not if they are otherwise affiliated with the fund sponsor).

<sup>5</sup> Release at Note 37.

<sup>6</sup> While BGFA’s comments are focused on ETFs, BGFA notes that other forms of non-traditional open-end fund products (such as master-feeder funds, variable insurance funds and funds-of-funds) may face similar issues under the Proposal’s standardized approach.

Certain key information about an ETF – including information that ETFs are generally required to disclose in their prospectus under the conditions of the exemptive relief under which they operate – could not be included in the summary prospectus under the Proposal. For example, ETF exemptive orders generally require an ETF’s regulatory filings and other publicly-distributed materials to include a disclaimer noting that shares of the ETF are not individually redeemable by a shareholder. The Commission has previously required such disclosure presumably because it considered this to be critical information that should be highlighted to ETF shareholders, but the Proposal would bar such information from appearing in an ETF’s summary prospectus. We believe the final amendments should, at the very least, make clear that disclosure items required by exemptive order to be included in an ETF prospectus may be included in the summary prospectus.

Furthermore, as ETFs evolve through Commission exemptive orders, it is likely that future ETFs will be subject to exemptive relief that may be conditioned on new disclosure requirements not currently envisioned. We believe it would be beneficial at this stage for the Commission to provide guidance as to how such prospective disclosure requirements will be integrated into the summary prospectus, and to empower the staff to review and address such issues outside of the exemptive process (which, in BGFA’s experience, is not well-suited to quick and practical resolution of technical disclosure issues). BGFA believes that the Commission’s failure to provide the staff flexibility to address unique ETF disclosure issues outside of the exemptive process will inevitably require the staff dedicated to review of exemptive applications to become highly involved in ETF disclosure issues, which would slow the current pace of review.

The Proposal would generally require the summary prospectus to contain Items 2 through 9 of Form N-1A. A number of these items are either imperfectly suited or inapplicable to ETFs; specifically, we note the following items:

- Item 7 of Form N-1A requires a fund to disclose that shares are redeemable and to describe redemption procedures. This requirement conflicts with an ETF’s obligation to disclose that its shares are not redeemable except when aggregated by an Authorized Participant.
- Because index-based ETFs seek to reflect proportionally the components of underlying indexes and transactions are generally effected in-kind, information relating to portfolio turnover rates has limited value to shareholders. We therefore propose that the final amendments permit ETF sponsors to exclude portfolio turnover information from the summary prospectuses of index-based ETFs if such information is not pertinent.
- The proposed amendments require the summary prospectus to provide quarterly top ten portfolio holdings information for each fund. The iShares® funds disclose their complete portfolio holdings information on the funds’ website and generally update this information after each trading day. We are concerned that top ten holdings information in the summary prospectus would be substantially out-of-date relative to the information that is already provided on the funds’ web site, and that providing out-of-date information in summary prospectuses would cause significant investor confusion. We suggest that funds providing portfolio holdings information (top ten holdings or complete holdings) on their websites monthly or more frequently should

be permitted to refer shareholders to the appropriate website rather than disclose this information in the summary prospectus.

In addition, we believe that summary prospectus information would be improved if the final amendments permitted certain types of information to be included if applicable. Specifically, we note the following:

- An ETF's summary prospectus should be permitted to contain a concise statement to the effect that ETF shares trade at market prices rather than NAV, which creates the likelihood of discounts and the possibility of premiums.
- ETFs should be permitted to provide a brief description of their unique structure.
- We believe it would be useful to permit ETF sponsors to inform ETF shareholders that they may pay brokerage commissions or similar transaction fees on their purchases and sales of ETF shares.<sup>7</sup>

#### Long-Form Prospectus

As discussed above, ETFs are required to make certain prospectus disclosures as a condition of their exemptive relief. Consistent with its stated objective of providing investors with information that is easier to use and more readily accessible by taking advantage of the expanded use of the Internet, we suggest that the Commission consider including in the final rulemaking the ability for ETFs to satisfy such obligations through Internet disclosure rather than prospectus disclosure where appropriate. For example, ETFs are generally required by exemptive order to provide detailed information regarding Bid/Ask Price and premium and discount information relative to NAV in the prospectus and on the fund's website. We suggest that rather than reproducing this information in the prospectus, an ETF should be permitted to reference the availability of this information on the fund's website.

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We thank the Commission for providing us the opportunity to comment on the Release, and we are eager to assist the Commission in any way we can to ensure that the proposed amendments will inure to the benefit of ETF investors. We note that this will only be achieved if the liability and other concerns of ETF sponsors are adequately addressed in the proposed amendments in a way that allows ETFs to use this new disclosure tool with confidence. Should you have any questions about our views, please feel free to contact the undersigned at (415) 597-2860.

Sincerely,



Ira P. Shapiro, Esq.  
Barclays Global Fund Advisors

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<sup>7</sup> The proposed amendments would require the summary prospectus to include disclosure relating to sales loads and certain types of fund payments to financial intermediaries that are generally inapplicable to ETFs, yet would not permit ETFs to disclose that shareholders may incur transaction costs on individual purchases and sales of ETF shares. The iShares funds currently disclose this information in their prospectus voluntarily.

cc: Hon. Christopher Cox  
Hon. Paul S. Atkins  
Hon. Kathleen L. Casey

Andrew J. Donohue, Director, Division of Investment Management  
Robert E. Plaze, Associate Director, Division of Investment Management

Benjamin J. Haskin, Willkie Farr & Gallagher LLP  
Margery K. Neale, Willkie Farr & Gallagher LLP