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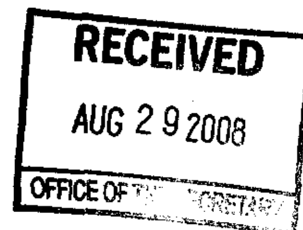
August 27, 2008



United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Nancy M. Morris, Secretary

Re: Exchange-Traded Funds: Proposed Rule: File No. S7-07-08.

Ladies and Gentlemen:

We are pleased to submit this letter (the "Letter") in response to a request for comment by the U.S. Securities and Exchange Commission (the "Commission") in proposing several new rules (together the "Proposed Rule") under the Investment Company Act of 1940 ("Act") that would relate to certain exchange-traded funds ("ETFs"). We commend the Commission for proposing the Proposed Rule and believe that adoption will spur more competition and increased innovation in this product class by streamlining the regulatory approval process for new ETFs. This Letter focuses its comments on Proposed Rule Section 6c-11(e)(4)(v), which would impose new requirements on ETFs or their index providers related to index and portfolio transparency (the "Index Provisions") and the Commission's request for comment on the misuse of non-public information by ETFs and affiliated index providers.

Russell Investment Group ("Russell") owns the Russell Indexes, the leading U.S. equity index family with over $4.4 trillion in investment assets[1] benchmarked against them and more than 1,300 index data clients worldwide. Nearly 60% of all institutional U.S. equity investment products and more than half of their associated assets use a Russell Index as their benchmark. Russell Indexes are also the foundation for many passive and derivative products, including ETFs, mutual funds, options and futures. Russell's Global Indexes reflect approximately 10,000 securities worldwide and use innovative methodologies that have pioneered index industry changes. One such innovation is the float-weighting methodology launched by Russell in 1984 and adopted broadly by other index providers (such as S&P, MSCI and FTSE) in the past six years. This innovation benefits investors by making indexes more representative and investable when utilizing this weighting methodology as opposed to total capitalization weighting.

In the release proposing the Proposed Rule, the Commission asserts that its Index Provisions will diminish possible discounts or premiums between an ETF's net asset value ("NAV") and its market value. As described in more detail below, contrary to the outcome contemplated in the proposing release, the Index Provisions will not diminish such discounts or premiums, but will unfairly deprive index providers of their intellectual property rights. Russell urges the Commission to eliminate the Index Provisions from its final rules related to ETFs in

[1] As of August 13, 2007.

Russell Investments

favor of existing methods (as described below) that effectively reduce such discounts or premiums. Russell also believes that index providers that are affiliated with investment companies, investment advisers or broker-dealers are appropriately regulated by existing law and regulation related to the misuse of non-public information and that no further regulation is necessary.

I. Proposed Rule Section 6c-11(e)(4)(v)

The proposing release requests comment on a number of issues, among them the effectiveness of Proposed Rule Section 6c-11(e)(4)(v) in diminishing potential discounts or premiums between an ETF's NAV and its market value. Russell applauds the Commission's goal of reducing such discounts and premiums, but, as set forth below, does not believe that Proposed Rule Section 6c-11(e)(4)(v) will achieve this goal.

A. Intellectual Property Considerations and Costs to ETFs' Shareholders

The Index Provisions require that ETFs either: (i) disclose on their Internet Web sites each business day the identities and weightings of their component securities and other assets, or (ii) for ETFs that attempt to replicate the returns of a securities index, disclose the identities and weightings of the component securities and other assets of that index on a publicly available Internet Web site. We believe that these requirements would unfairly deprive index providers like Russell of intellectual property rights without fair compensation. Russell also believes that these requirements might not be necessary or effective in accomplishing the Commission's goal of diminishing potential discounts or premiums between a ETFs' NAV and its market value, with the result that the requirements would be to the detriment of ETFs' shareholders.

Index providers invest significant resources in the design, construction, management, maintenance and distribution of securities indexes. Russell and other index providers employ large and growing staffs of professionals that design, construct, manage, maintain and distribute securities indexes. These professionals utilize costly third party data sources and expensive, sophisticated technology in virtually every facet of their activities. Since Russell and other index providers conceive unique and proprietary algorithms, transform them into securities indexes, develop those indexes into marketable products, distribute those products and continuously monitor and enhance those products at great expense and effort, index providers like Russell have protectable intellectual property interests in their indexes and index related products.[2] As

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[2] Dow Jones & Co. v. Int'l Securities Exchange Inc., 79 USPQ2d 1225, 1230-32 (2d Cir. 2006; discussing the Comex case where index provider acquired a property right in the skill, money, labor and reputation expended in generating and producing a securities index); Standard & Poor's Corp., Inc. v. Commodity Exchange, Inc., 216 USPQ 841, 844-45 (2d Cir. 1982; expending skill, money and labor, *in particular S&P's choice of securities and weighting of securities*, creates a property right); Dow Jones & Co., Inc. v. Bd. Of Trade of the City of Chicago, 217 USPQ 901, 904-06, (S.D.N.Y. 1982; judgment in selecting index components transformed un-copyrightable list into protected property); Standard & Poor's Corp., Inc. v. Commodity Exchange, Inc., 220 USPQ 522 (S.D.N.Y. 1982; 523-25 (index inputs, underlying algorithms and operational procedures constitute trade secrets); Bd. Of Trade of the City of Chicago v Dow Jones & Co., Inc., 218 USPQ 636, 637, 640-44 (IL App. Ct. 1982; effort and expense of compiling index, proprietary method in selecting index components and calculating "divisor" coupled with extensive licensing and distribution efforts created property right).

noted above, the Index Provisions' requirement that Russell and other index providers publicly disclose valuable intellectual property would, if adopted, deprive Russell and other index providers of valuable intellectual property rights in their securities indexes and index related products without compensation.

The Index Provisions' requirement of public disclosure of the components and weightings of the securities contained in Russell's (and other providers') indexes does not address the untoward consequences of that disclosure outside the limited context of ETFs offered in the United States. Russell's (and other providers') property rights would be harmed and could even be made worthless by that disclosure. In addition to earning fees by licensing index data, trademarks and other property to U.S. ETFs, index providers like Russell earn license fees on their index property licensed to others worldwide including, among others, investment advisers, pension plans, investment consultants, structured product issuers, derivative product issuers, custodians, financial data vendors, endowments, foundations and universities. As suggested in comment letters to the Proposed Rule submitted by others,[3] Russell protects its property rights in that data by contractually restricting its licensees from disclosing data as envisioned by Section 6c-11(e)(4)(v). If the Index Provisions were adopted as proposed, Russell would not be inclined to voluntarily make that envisioned disclosure since that disclosure could extinguish all of its revenue sources other than licensing fees received from ETFs. We believe that Russell is not unique among index providers in this respect.

The Index Provisions would likely produce unintended negative outcomes for ETFs and their shareholders. Index providers would likely increase ETFs' license fees in an attempt to offset lost revenues from other clients resulting from the Index Provisions' disclosure requirements. (Alternatively, index providers might simply terminate their license agreements with U.S. ETFs to protect their other, larger revenue sources.) Increased license fees would inevitably be passed along to ETFs' shareholders. Some advisers to ETFs might absorb a portion of those license fee increases, but margin compression in the investment management industry makes it likely that ETFs' shareholders would bear the largest portion of those increased fees. This redistribution of license fee revenue might have a number of other negative affects on the U.S. ETF industry, such as closure and liquidation of ETFs, thereby exacerbating the license fee expense increase for remaining ETFs and their shareholders and stifling the creation of new ETFs. In any event, the Index Provisions' negative economic impact to index provider revenues outside of the ETFs channel will be borne by ETFs' shareholders in the form of increased fund expenses and fewer investment choices.

B. Reduction of Discounts or Premiums Between ETFs' NAV and Market Values

The proposing release suggests that the Index Provisions will assist in diminishing potential discounts or premiums between ETFs' NAVs and their market values ("ETF Arbitrage"). Commentators on the Proposed Rule have observed that there are other forces

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[3] Barclays Global Fund Advisors Comment Letter, Section II.A.1 dated May 16, 2008 ("Barclays"); Investment Company Institute Comment Letter, Section I.B.1.a dated May 19, 2008 ("ICI"); NYSE Arca Comment Letter, Section III.B dated May 29, 2008 ("NYSE"); KattenMuchinRosenman LLP Comment Letter, Section B.4 dated May 30, 2008 ("Katten").

already at work which effectively accomplish ETF Arbitrage, and indicated that the Index Provisions are, or could be, one of those forces.[4] Other knowledgeable commentators have stated that extant practices in ETFs' markets such as the requirement that an ETFs' shares must be created and redeemed at NAV, current stock exchange rules, daily publication of the "in-kind basket" to persons buying or selling creation units and the equalization of trade imbalances by exchange specialists and market makers already accomplish the ETF Arbitrage that the Index Provisions seek to address. Russell agrees with the latter commentators.

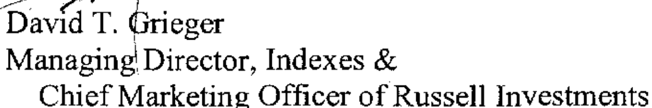
II. Affiliated Index Providers

In the Proposed Rule's proposing release the Commission stated that it believes that the laws and regulations related to the misuse of non-public information are sufficient to protect the misuse of such information between index provider and their ETF affiliates. Nonetheless, the proposing release questions whether any final rule related to ETFs should contain the Commission's previous exemptive order conditions, such as erecting "Chinese walls" between an index provider and its affiliated ETFs adviser and the ETFs themselves, which were aimed at preventing the communication and misuse of material non-public information. Russell agrees with the Commission and believes that such conditions are not required in any final rule related to ETFs.[5]

III. Conclusion

We respectfully request that, based on the foregoing discussion, that the Commission eliminate the Index Provisions from its final rules and not pursue any regulation of affiliated index providers with respect to the misuse of non-public information. We would be pleased to meet and discuss these matters with the Commission and the Division and to respond to any questions. Please do not hesitate to contact Elliot S. Cohen at (253) 439-2959 if we can be of further assistance.

Respectfully submitted,



David T. Grieger
Managing Director, Indexes &
Chief Marketing Officer of Russell Investments

cc: The Honorable Chairman Christopher Cox
Andrew J. Donohue, Director, Division of Investment Management
Russell Investments Index Directors
Kenneth Willman, Chief Legal Officer

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[4] Barclays at Sections I, II.A.1; ICI at Section B.1.a; NYSE at Section III.A; Katten at Section B.3; NYSE at Section III.A; Vanguard Comment Letter, Section I.A, Fund Transparency. See Id.

[5] See also Barclays at pp. 15-16; ICI at 9; Xshares Advisors LLC Comment Letter at pp. 7-8, dated May 20, 2008; Katten at pp. 10-11.