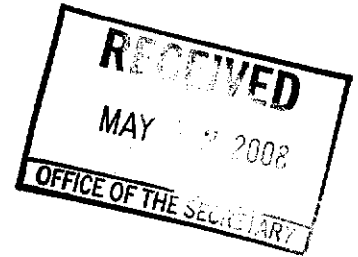


May 8, 2008

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090Re: Exchange-Traded Funds, Release No. 33-8901,  
File No. S7-07-08 (the "Release")

Dear Ms. Morris:

Barclays Capital Inc. ("Barclays Capital"), appreciates the recent invitation to comment on the Release issued by the Securities and Exchange Commission (the "Commission") proposing a new rule under the Investment Company Act of 1940, as amended (the "1940 Act"), that would exempt exchange-traded funds ("ETFs") from certain provisions of the 1940 Act and the rules thereunder.

Proposed Rule 6c-11 under the 1940 Act (the "Proposed Rule") would codify the exemptive orders issued to index-based ETFs and certain actively managed ETFs, including relief from Sections 17(a)(1) and 17(a)(2) of the 1940 Act to permit certain persons who are affiliated persons of an ETF to purchase and redeem ETF shares ("creation units") in in-kind transactions, rather than cash transactions. The Release requests comment on the proposed exemptions, including specifically whether the exemptive relief should extend to affiliated persons other than those covered by the Proposed Rule. Barclays Capital applauds the Commission's efforts to permit ETFs to operate without first having to obtain exemptive relief from the Commission and, for the reasons set forth below, strongly recommends that the exemptive relief in the Proposed Rule with respect to Sections 17(a)(1) and 17(a)(2) be extended to other affiliated persons, including broker-dealers that are affiliated with the adviser of an ETF. Barclays Capital believes that the ability of affiliated persons of an ETF's adviser, in addition to

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
May 8, 2008

the types of affiliated persons covered by the Proposed Rule, to act as “Authorized Participants”<sup>1</sup> and engage in in-kind transactions with an ETF, would add depth and liquidity to the ETF market and enhance the efficiency of the market for all investors.

Barclays Capital, a Connecticut company, is a broker-dealer registered under the Securities Exchange Act of 1934. Barclays Capital is ultimately wholly owned by Barclays Bank PLC, an English company. Barclays Bank PLC is also the indirect parent company of Barclays Global Fund Advisors (“BGFA”), the investment adviser to the series of iShares Trust and iShares Inc. (the “iShares Funds”), all of which operate as ETFs. Accordingly, Barclays Capital is an affiliated person of BGFA, and an affiliated person of an affiliated person of the iShares Funds. While Barclays Capital is an Authorized Participant with respect to non-affiliated ETFs and is active both in the U.S. and European ETF markets, it is not an Authorized Participant with respect to the iShares Funds, due to its affiliation with BGFA, the adviser to the iShares Funds.

Exemption from Sections 17(a)(1) and 17(a)(2) in the Proposed Rule

ETFs do not offer their shares directly to investors. Rather, only Authorized Participants such as Barclays Capital purchase and redeem shares directly from the ETF in large blocks called “creation units”; retail investors purchase and sell ETF shares in secondary market transactions. As outlined in the Proposed Rule, the Authorized Participant deposits with the ETF a “purchase basket” of securities and other assets identified by the ETF that day, and receives the creation unit in return for those assets. The Authorized Participant redeems the number of ETF

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<sup>1</sup> Only “Authorized Participants” may purchase and redeem creation units of an ETF. Authorized Participants must be either (a) broker-dealers or other participants in the Continuous Net Settlement System of the National Securities Clearing Corporation or (b) participants in The Depository Trust Company.

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
May 8, 2008

shares that comprise a creation unit from the ETF in exchange for a “redemption basket” of securities and other assets. As with the purchase basket assets, the redemption basket assets will be specified at the beginning of the business day by the ETF. The ability of Authorized Participants to purchase and redeem creation units at net asset value (“NAV”) provides a useful mechanism that may help keep the market price of ETF shares near the NAV per share of the ETF.

The Proposed Rule, like the current exemptive orders, would exempt from Sections 17(a)(1) and 17(a)(2) of the 1940 Act the purchase and redemption of ETF creation units in in-kind, rather than cash, transactions by persons that are affiliated with the ETF solely because they own 5% or more, and in some cases more than 25%, of the ETF’s outstanding securities (“first-tier affiliates”), and by persons that are affiliated with the first-tier affiliates or that own 5% or more and in some cases more than 25%, of the outstanding securities of one or more funds advised by the ETF’s investment adviser (“second-tier affiliates”).<sup>2</sup> The Release states that the Commission has granted exemptions to permit these first- and second-tier affiliates to engage in in-kind purchase and redemption transactions with ETFs based on statements by applicants that these first- and second-tier affiliates are not treated differently from non-affiliates when engaging in purchases and redemptions of creation units with the ETF, and that, as a result, there is no opportunity for these affiliated persons to effect a transaction detrimental to the ETF’s other shareholders. The Proposing Release states that the securities to be deposited for purchases, and

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<sup>2</sup> Section 17(a)(1) of the 1940 Act prohibits any first- or second-tier affiliate, acting as principal, from knowingly selling any security or other property to a registered fund with certain limited exceptions, including securities of which the buyer is the issuer. Section 17(a)(2) of the 1940 Act prohibits any first- or second-tier affiliate, acting as principal, from knowingly purchasing from such registered fund, any security or other property, except securities of which the seller is the issuer.

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
May 8, 2008

to be delivered for redemptions, of creation units are announced at the beginning of each business day, and all purchases and redemptions of creation units are valued in the same manner, using the same standards, as those securities are valued for purposes of calculating the ETF's NAV.

Application of Proposed Rule to Other Affiliated Persons

The Commission has recognized in both the existing exemptive orders and the Release that it is appropriate to permit first- and second-tier affiliates of ETFs to engage in in-kind transactions with the ETF in connection with the purchase and redemptions of creation units because they are unable to exploit their status as an affiliate to overreach the ETF. Barclays Capital respectfully submits that other types of affiliates, if permitted to act as Authorized Participants, would similarly be treated identically to non-affiliates acting as Authorized Participants and would be equally unable to disadvantage the ETF and its other shareholders. As described in the Release, on each business day the ETF's adviser publishes a list of the names and required number of shares of each security or other assets included in the purchase basket, which an Authorized Participant must deposit in order to purchase the ETF's shares at NAV. Similarly, on each business day the ETF's adviser publishes a list of the securities and other assets included in the redemption basket, which an Authorized Participant will receive when it redeems the ETF's shares at NAV. Those lists are the same for all Authorized Participants. An Authorized Participant that is an affiliated person of the ETF's adviser would deposit the same assets, in the same amounts, and receive the same assets, in the same amounts, as any other Authorized Participant engaged in transactions with the ETF on that business day. Similarly, the assets to be deposited and received will be valued in the same manner as those assets currently held by the ETF, regardless of the identity of the Authorized Participant.

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
May 8, 2008

Barclays Capital further submits that, consistent with the public policy underlying the affiliated transaction prohibitions of Section 17(a), an Authorized Participant that is an affiliated person of the ETF's adviser would have neither the "ability nor the pecuniary incentive"<sup>3</sup> to influence the actions of the ETF in connection with the purchase and redemption transactions. The ETF's adviser, pursuant to the requirements of the federal securities laws, must adopt policies and procedures to prevent it from using or disclosing material non-public information of the ETF, such as the composition of purchase and redemption baskets prior to publication, in violation of the securities laws. Moreover, the highly transparent nature of ETFs should operate to reduce, if not minimize, the risk that any Authorized Participant, whether affiliated or not with the ETF's adviser, would be in a position to manipulate either the contents of the purchase and redemption baskets or the pricing of ETF securities. Any such manipulation would be reflected in the ETF's portfolio holdings and NAV and would be readily transparent to other market participants.

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<sup>3</sup> See Investment Company Mergers, Investment Company Act Rel. No. 25259 (Nov. 15, 2001) (proposing amendments to Rule 17a-8 under the 1940 Act), citing, among other things, Investment Trusts and Investment Companies: Hearings on S.3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76<sup>th</sup> Cong. 3<sup>d</sup> Sess., at 256-59 (1940).

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
May 8, 2008

Barclays Capital appreciates the opportunity to comment on the Proposed Rule and would be happy to discuss our comments in more detail. Should you have any questions about our comments, please feel free to contact Shirin Emami by telephone at (212) 412-7552 or by e-mail at [shirin.emami@barcap.com](mailto:shirin.emami@barcap.com).

Very truly yours,



Philippe El-Asmar  
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Hon. Paul S. Atkins  
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