



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

May 30, 2006

Mr. George H. White, Esq.  
Sullivan & Cromwell LLP  
1 New Fetter Lane  
London, England EC4A 1AN

**Re: *iPath Index-Linked Securities***  
**File No. TP 06-71**

Dear Mr. White:

In your letter dated May 12, 2006, you request on behalf of Barclays Bank PLC ("Barclays Bank") and on behalf of the New York Stock Exchange, Inc. (the "NYSE") and persons or entities engaging in transactions in the iPath Securities, exemptions from, or interpretive or no-action advice regarding Section 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10a-1 under the Exchange Act, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO in respect of trading of the iPath Securities on the NYSE and the redemption of iPath Securities.

Barclays Bank, along with its subsidiary undertakings, is an international financial services group engaged primarily in banking, investment banking, and asset management. Barclays Bank is wholly owned by Barclays PLC, which is the ultimate holding company of the Barclays group of entities.

On April 26, 2006, Barclays Bank filed with the Commission preliminary pricing supplements relating to each of the two classes of iPath Securities. Each Preliminary Pricing Supplement states that the iPath Securities will constitute Medium-Term Notes, Series A, of Barclays Bank. As such, the iPath Securities are direct, unconditional, unsecured and unsubordinated obligations of Barclays Bank. Barclays Bank currently intends to issue each such class of iPath Securities pursuant to its effective Registration Statement on Form F-3. It is expected that the iPath Securities will be issued pursuant to a trust indenture, dated September 16, 2004, between Barclays Bank and The Bank of New York, as Trustee.

Each class of iPath Securities will consist of index-linked Notes. One issue is linked to the GSCI Total Return Index (the "GSCI Index") and the other issue is linked to the Dow Jones-AIG Commodity Index Total Return (the "DJ-AIG Index"). Each of these indices is based on one or more futures contracts on physical commodities. The valuation of each class of iPath Securities will be derived from the value of the index to

Mr. George H. White, Esq.  
Sullivan & Cromwell LLP  
May 30, 2006  
Page 2 of 5

which it is linked, subject to an investor fee. Holders of the iPath Securities will be allowed, at their option and subject to certain restrictions, to cause Barclays Bank to redeem their iPath Securities on a weekly basis. The minimum number of iPath Securities that will be allowed to be redeemed on any redemption date is 50,000.

This response is attached to the enclosed photocopy of your correspondence. Each defined term in this letter has the same meaning as defined in your letter, unless otherwise noted herein.

**Response:**

**Rule 10a-1**

Rule 200(a) of Regulation SHO defines "short sale." Rule 10a-1(a) under the Exchange Act covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system, and prohibits short sales with respect to these securities unless such sales occur on a "plus tick," (that is, a price above the price at which the immediately preceding sale was effected), or "zero-plus tick," (that is, at the last sale price if it was higher than the last different price). Rule 10a-1 is designed to prevent the market price of a stock or other "reported security," as defined in Rule 11Aa3-1(a)(4) under the Exchange Act, from being manipulated downward by unrestricted short selling.

On the basis of your representations and the facts presented in your letter, in particular the derivative value of iPath Securities, it would not appear that trading in iPath Securities would be susceptible to the practices that Rule 10a-1 is designed to prevent. In particular, Barclays Bank anticipates that the market value of iPath Securities will rise or fall based on changes in the value of the relevant underlying index. In addition, the iPath Securities may be redeemed at the option of the holder on a weekly basis (in quantities of 50,000 or more). Accordingly, without necessarily concurring in your analysis, the staff of the Division of Market Regulation ("Staff") will not recommend to the Commission enforcement action under Rule 10a-1 to permit sales of iPath Securities without regard to the "tick" requirements of Rule 10a-1.

**Rule 200(g) of Regulation SHO**

Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any equity security as "long," "short," or "short exempt." Rule 200(g)(2) requires that a short sale order must be marked "short exempt" if the seller is relying on relief from the tick test of Rule 10a-1 of the Exchange Act or any short sale price test of any exchange or national securities association.

Accordingly, in conjunction with the no-action position taken above to permit sales of iPath Securities without regard to the "tick" requirements of Rule 10a-1, on the basis of your representations and the facts presented, and without necessarily concurring in your analysis, the Staff will not recommend to the Commission enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks "short," rather than "short exempt," a short sale that is effected in iPath Securities, subject to the following conditions:

- i. For each exempt short sale, the various market centers that execute such sales have instituted procedures to "mask" the short sale character of the transaction so that they are executed as short exempt;
- ii. A broker-dealer executing exempt short sales will mark such sales as "short," and in no event will such sales be marked "long;" and
- iii. The market centers will maintain an audit trail of all such trade executions, which is capable of being produced and subject to review upon request by the Commission and other appropriate regulatory authorities.

## **Regulation M**

### **Rule 101 of Regulation M**

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exemptions, prohibits 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 the Regulation. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities, and affiliated purchasers of such persons.

On the basis of your representations and the facts presented, particularly that iPath Securities are redeemable at the option of the holder on a weekly basis (in quantities of 50,000 or more) and that the secondary market price of iPath Securities should not vary substantially from the value of the relevant underlying index, the Staff will not recommend to the Commission enforcement action under Rule 101 of Regulation M, thus permitting persons who may be deemed to be participating in a distribution of iPath Securities to bid for or purchase iPath Securities during their participation in such distribution.

### **Rule 102 of Regulation M**

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

On the basis of your representations and the facts presented, particularly that iPath Securities are redeemable at the option of the holder on a weekly basis (in quantities of 50,000 or more), the Staff will not recommend to the Commission enforcement action under Rule 102 of Regulation M, thus permitting Barclays Bank and affiliated purchasers to redeem iPath Securities.

### **Section 11(d)(1) and Rule 11d1-2**

On the basis of your representations and the facts presented, the Staff will not recommend enforcement action to the Commission under Section 11(d)(1) of the Exchange Act if broker-dealers treat iPath Securities, for the purposes of Rule 11d1-2 under the Exchange Act, as "securities issued by a registered open-end investment company or unit investment trust as defined in the Investment Company Act of 1940" and thereby extend or maintain or arrange for the extension or maintenance of credit on iPath Securities 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.

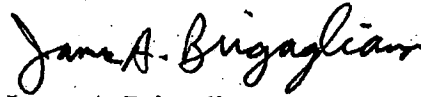
The foregoing no-action positions taken under Section 11(d)(1), Rule 10a-1, Rule 200(g) of Regulation SHO and Rules 101 and 102 of Regulation M are based solely on your representations and the facts presented, and are strictly limited to the application of those rules to transactions involving iPath Securities under the circumstances described above and in your letter. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action positions taken under Section 11(d)(1), Rule 10a-1, Rule 200(g) of Regulation SHO and Rules 101 and 102 of Regulation M are subject to the condition that such transactions in iPath Securities or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

The foregoing no-action positions are subject to modification or revocation as necessary or appropriate. In addition, persons relying on these no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for

Mr. George H. White, Esq.  
Sullivan & Cromwell LLP  
May 30, 2006  
Page 5 of 5

compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these no-action positions. The Staff expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal or state laws or rules or regulations of any self-regulatory organizations to, the proposed transactions.

Very truly yours,



James A. Brigagliano  
Acting Associate Director  
Office of Trading Practices and  
Processing  
Division of Market Regulation

Attachment

# SULLIVAN & CROMWELL LLP

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May 12, 2006

By Facsimile and Courier

Mr. James A. Brigagliano,  
Assistant Director,  
Office of Trading Practices and Processing,  
Division of Market Regulation,  
Securities and Exchange Commission,  
100 F Street, N.E.,  
Washington, D.C. 20549.

Re: Request of Barclays Bank PLC for Exemptive, Interpretive and No-Action Relief for iPath Index-Linked Securities from Section 11(d)(1), Rule 10a-1, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO, in each case of or under the Securities Exchange Act of 1934

Dear Mr. Brigagliano:

We are writing on behalf of Barclays Bank PLC ("Barclays Bank"), which proposes to issue initially two classes of index-linked securities entitled "iPath<sup>SM</sup> Index-Linked Securities" (the "iPath Securities"), one of which will be linked to the GSCI<sup>®</sup> Total Return Index (the "GSCI<sup>®</sup> Index") and the other of which will be linked to the Dow Jones—AIG Commodity Index Total Return (the "DJ-AIG Index"). Barclays Bank, on behalf of itself, the New York Stock Exchange, Inc. (the "NYSE") and persons or entities engaging in transactions in the iPath Securities, hereby respectfully requests exemptions from, or interpretive or no-action advice regarding, Section 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10a-1 under the Exchange Act, Rules 101 and 102 of Regulation M under the Exchange Act and Rule 200(g) of Regulation SHO under the Exchange Act.

Sullivan & Cromwell LLP is a registered limited liability partnership established under the laws of the State of New York. The personal liability of our partners is limited to the extent provided in such laws. Additional information is available upon request or at [www.sullcrom.com](http://www.sullcrom.com).

A list of the partners' names and professional qualifications is available for inspection at the above address. All partners are either registered foreign lawyers in England and Wales or solicitors. Regulated by the Law Society.

Barclays Bank believes that the relief requested in this letter is substantially similar to the relief granted by the Commission previously, as discussed further below.<sup>1</sup>

**I. Relevant Facts**

**(a) Background Information**

Barclays Bank, along with its subsidiary undertakings, is an international financial services group engaged primarily in banking; investment banking and asset management. In terms of assets employed, it is one of the largest financial services groups in the United Kingdom. Barclays Bank also operates in many other countries and is a leading provider of co-ordinated global services to multinational corporations and financial institutions in the world's main financial centers. Barclays Bank is wholly owned by Barclays PLC, which is the ultimate holding company of the Barclays group of entities.

On April 26, 2006, Barclays Bank filed with the Commission preliminary pricing supplements (each a "Preliminary Pricing Supplement") relating to each of the

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<sup>1</sup> See, e.g., letters from Nancy J. Sanow, Assistant Director, Division of Market Regulation, to James E. Duffy, Esq., General Counsel, The American Stock Exchange, Inc., dated January 22, 1993 (SPDR Trust) and April 21, 1995 (Midcap SPDR Trust), and to Michael Simon, Esq., Milbank, Tweed, Hadley & McCloy, dated March 22, 1996 (CountryBaskets); letters from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Gordon, Altman, Butowsky, Weitzen, Shalov & Wein, dated December 14, 1998 (Select Sector) and to James F. Duffy, Esq., Executive Vice President and General Counsel, The American Stock Exchange, Inc., dated December 28, 1998 (Select Sector) and January 9, 1998 (DIAMONDS Trust); and letters from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Gordon, Altman, Butowsky, Weitzen, Shalov & Wein, dated December 22, 1998, to James F. Duffy, Esq., Executive Vice President and General Counsel, The American Stock Exchange, Inc., dated March 3, 1999 (NASDAQ-100 Trust), to Kathleen Moriarty, Esq., Carter, Ledyard & Milburn, dated May 16, 2000 (iShares) and May 21, 2001 (Vanguard), to David Yeres, Esq., Clifford Chance US LLP, dated January 27, 2005 (iShares COMEX Gold Trust), to Stuart M. Strauss, Esq., Clifford Chance US LLP, dated October 25, 2005 (PowerShares Lux Nanotech Portfolio), and to Michael Schmidtberger, Esq., Sidley Austin Brown & Wood LLP, dated January 19, 2006 (DB Commodity Index Tracking Fund). We note that the issuer for which relief was requested in each of these letters was a trust or other investment vehicle, whereas in the present case the iPath Securities are unsecured non-convertible debt obligations of a corporate entity, Barclays Bank PLC. By requesting the relief sought in this letter further to our conversations with the Staff, Barclays Bank does not concede that the iPath Securities are equity securities for purposes of any provision of the U.S. federal securities laws.

two classes of iPath Securities.<sup>2</sup> Barclays Bank currently intends to issue each such class of iPath Securities pursuant to its Registration Statement on Form F-3 (File No. 333-126811). Each Preliminary Pricing Supplement states that the iPath Securities will constitute Medium-Term Notes, Series A (the "Notes"), of Barclays Bank. As such, the iPath Securities will constitute direct, unconditional, unsecured and unsubordinated obligations of Barclays Bank, ranking *pari passu* with all of its other unsecured and unsubordinated obligations (except such obligations as are preferred by operation of law). It is contemplated that the iPath Securities will be issued pursuant to a trust indenture, dated September 16, 2004, between Barclays Bank and The Bank of New York, as Trustee. Barclays Bank has entered into a license agreement with the sponsor or publisher of each index underlying the iPath Securities, permitting Barclays Bank to link the relevant iPath Securities to that index. The iPath Securities would be in registered, book-entry form represented by one or more global notes. In connection with the initial issuance of each of the two classes of iPath Securities, Barclays Bank will file with the Commission a final pricing supplement (a "Pricing Supplement"), setting forth the material terms of the iPath Securities being issued.

(b) The iPath Securities

Each class of iPath Securities would consist of index-linked Notes. One class would be linked to the GSCI<sup>®</sup> Index and the other class would be linked to the DJ-AIG Index. Each of these indices is based on one or more futures contracts on physical commodities and is described in greater detail in section (c) below.

The valuation of each class of iPath Securities would be derivative of the value of the index to which it is linked, subject to an investor fee. At maturity, holders of any outstanding iPath Securities would receive a cash payment equal to the principal amount of their iPath Securities *multiplied by* the relevant index factor *less* the investor fee. The index factor on a given day would be the closing value on that day of the index to which that particular class of iPath Securities is linked *divided by* the closing value of the index on the pricing date for such class. The investor fee is equal to 0.75% per year *times* the principal amount of the iPath Securities *times* the index factor, as calculated on a daily basis.<sup>3</sup>

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<sup>2</sup> Each Preliminary Pricing Supplement relates to the prospectus supplement dated September 22, 2005 and the prospectus dated September 21, 2005, both of which were filed in relation to Barclays Bank's Registration Statement on Form F-3 (File No. 333-126811).

<sup>3</sup> The investor fee would begin at zero and increase on each calendar day by an amount equal to 0.75% *times* the principal amount of the iPath Securities *times* the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) *divided by* 365.



Holders of the iPath Securities would be allowed, at their option and subject to certain restrictions, to cause Barclays Bank to redeem their iPath Securities on any of the weekly redemption dates between issuance and maturity. The minimum number of iPath Securities that would be allowed to be redeemed on any redemption date would be 50,000.<sup>4</sup> Upon redemption, the holder would receive a cash payment equal to the principal amount of the iPath Securities being redeemed *multiplied by* the index factor on the relevant valuation date (which would be three business days prior to the redemption date) *less* the investor fee as of the relevant valuation date.

(c) The Indices

The following descriptions of the indices to which the iPath Securities are linked are based on or derived from publicly available information and, in the case of the DJ-AIG Index, the Dow Jones—AIG Commodity Index Handbook. Barclays Bank has not independently verified the information.

1. *The GSCI<sup>®</sup> Index*

The GSCI<sup>®</sup> Index is sponsored by Goldman, Sachs & Co. (“GS”) and reflects the excess returns that are potentially available through an unleveraged investment in the futures contracts comprising the Goldman Sachs Commodity Index<sup>®</sup> (the “GSCI<sup>®</sup>”) plus the Treasury Bill rate of interest that could be earned on funds committed to the trading of the underlying contracts.

The GSCI<sup>®</sup> is a proprietary index on a production-weighted basket of futures contracts on physical commodities traded on trading facilities in major industrialized countries. The contracts included in the GSCI<sup>®</sup> are weighted, on a production basis, to reflect their relative significance to the world economy. The fluctuations in the value of the GSCI<sup>®</sup> are intended generally to correlate with changes in the prices of the underlying physical commodities in global markets.

GS selects the contracts included in the GSCI<sup>®</sup> pursuant to a series of published eligibility criteria and in consultation with a Policy Committee consisting of three employees of GS or its affiliates and five independent members. In 2005, the GSCI<sup>®</sup> included 24 contracts. GS, in consultation with the Policy Committee, determines the weighting of each contract in the GSCI<sup>®</sup>.

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<sup>4</sup> Registered broker-dealers and other financial intermediaries exempt from (or otherwise not subject to) the requirement to register as broker-dealers may bundle an investor’s iPath Securities with those of other redeeming investors in satisfaction of this threshold.

The value of the GSCI<sup>®</sup> Index on any given day is calculated first by determining the contract daily return. The contract daily return is equal to the sum, for each of the commodities included in the GSCI<sup>®</sup>, of the applicable daily contract reference price on the relevant contract (as quoted by the trading facility through which the contract trades), *multiplied by* the appropriate contract production weight<sup>5</sup> *and*, during a “roll period”, the appropriate “roll weight”,<sup>6</sup> *divided by* the total dollar weight<sup>7</sup> of the GSCI<sup>®</sup> on the preceding day, *minus one*. The value of the GSCI<sup>®</sup> Index is equal to the product of the value of the GSCI<sup>®</sup> Index on the previous business day, *multiplied by one plus the sum of the contract daily return and the Treasury Bill return*<sup>8</sup> on the business day on which the calculation is made, *multiplied by one plus the Treasury Bill return* for each non-business day since the immediately preceding business day.

GS makes the official calculations of the GSCI<sup>®</sup>. At present, this calculation is performed continuously, is reported on Reuters page GSCI<sup>®</sup> (or any successor or replacement page) and is updated on Reuters at least once every three minutes during business hours on each business day. The settlement price for the GSCI<sup>®</sup>

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<sup>5</sup> The contract production weights used in calculating the GSCI<sup>®</sup> are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the contract production weight of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each such contract is sufficiently liquid relative to the production of the commodity.

<sup>6</sup> The “roll weight” of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they approach expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the GSCI<sup>®</sup> is designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in the GSCI<sup>®</sup> also takes place over a period of days at the beginning of each month (referred to as the “roll period”). On each day of the roll period, the “roll weights” of the first nearby contract expirations on a particular commodity and the most distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the GSCI<sup>®</sup> is gradually shifted from the first nearby contract expiration to the more distant contract expiration.

<sup>7</sup> The total dollar weight of the GSCI<sup>®</sup> is the sum of the dollar weight of each of its components. The dollar weight of each component on any given day is equal to its daily contract reference price, *multiplied by* the appropriate contract production weight *and*, during a roll period, the appropriate roll weight.

<sup>8</sup> The Treasury Bill return is the return on a hypothetical investment in the GSCI<sup>®</sup> at a rate equal to the interest rate on a specified U.S. Treasury Bill.

Index is currently reported on Reuters page GSCI<sup>®</sup> (or any successor or replacement page) on each business day between 4:00 pm and 6:00 pm New York time.

## 2. *The DJ-AIG Index*

The DJ-AIG Index was developed by AIG International Inc. ("AIGI") and is calculated by Dow Jones & Company, Inc. ("Dow Jones") in conjunction with AIGI. It is a unique, diversified, economically rational and liquid benchmark for commodities as an asset class. The DJ-AIG Index is designed to be a diversified benchmark for commodities as an asset class and reflects the returns that are potentially available through an unleveraged investment in the futures contracts on physical commodities comprising the DJ-AIG Index plus the rate of interest that could be earned on cash collateral invested in specified Treasury Bills.

The DJ-AIG Index currently is composed of 19 exchange-traded futures contracts on physical commodities, all of which are traded either on U.S. exchanges or the London Metal Exchange. The DJ-AIG Index is re-weighted and re-balanced each year by AIG Financial Products Corp. ("AIG-FP") under the supervision of the Dow Jones-AIG Commodity Index Oversight Committee, a group of prominent members of the financial and academic communities selected by AIG-FP.

The valuation of the DJ-AIG Index is calculated by Dow Jones. On a given day, the value of the DJ-AIG Index equals the sum of the value of each contract as multiplied by the contract's Commodity Index Multiplier<sup>9</sup>, plus the value of one day's interest as calculated using the rate of interest on a specified U.S. Treasury Bill. At present, Dow Jones disseminates the value of the DJ-AIG Index approximately every 15 seconds (assuming the value has changed within such 15 second interval) from 8:00 a.m. to 3:00 p.m. New York time, and currently publishes a daily value of the DJ-AIG Index on Reuters page AIGCII at approximately 4:00 p.m. New York time, on each business day.

### (d) Issuance and Redemption of the iPath Securities

Barclays Bank intends to issue the iPath Securities for cash to investors procured by or through Barclays Capital Inc. ("BCI"), as agent pursuant to a distribution agreement. BCI is a wholly owned subsidiary of Barclays Bank and a member firm of the National Association of Securities Dealers, Inc. ("NASD"). Pursuant to the distribution agreement, BCI can engage in the distribution of the iPath Securities to

<sup>9</sup> Each contract is assigned a Commodity Index Multiplier to determine its relative weighting within the DJ-AIG Index.

investors on a continuous basis. Barclays Bank and BCI may also engage Barclays Global Investor Services, their affiliate and an NASD member, to assist in marketing the iPath Securities. Depending on the level of demand for each class of the iPath Securities, Barclays Bank may issue additional amounts of such class of iPath Securities in the future that will constitute a further issuance of, and trade fungibly with, the iPath Securities of such class issued on the original issue date.

As described above, holders of the iPath Securities would be allowed, at their option, to cause Barclays Bank to redeem their iPath Securities on any of the weekly redemption dates<sup>10</sup> between issuance and maturity. In order to redeem iPath Securities, a holder would first need to instruct its broker (or other nominee who holds the iPath Securities of record) to deliver a notice of redemption to Barclays Bank by e-mail no later than 11:00 am New York time on the business day prior to the relevant valuation date. Barclays Bank would then send the broker or other nominee a form of confirmation of redemption; the broker or other nominee would need to deliver the signed confirmation of redemption back to Barclays Bank via facsimile by 4:00 pm New York time on the same day. Finally, the broker or nominee would need to transfer the holder's book-entry interest to the Trustee, as DTC custodian, for cancellation on behalf of Barclays Bank, at or prior to 10:00 am on the redemption date.

(e) Secondary Market Trading

Barclays Bank intends to apply to list the iPath Securities on the NYSE, provided that the Commission approves the NYSE's application pursuant to Section 19(b) of the Exchange Act to allow for such listing. On the NYSE, the price of individual or lots of iPath Securities would be based on a current bid/offer market, subject to customary brokerage commissions and charges.

Barclays Bank expects that the value of the relevant underlying index on any day will affect the market price of the associated class of iPath Securities more than any other factor. Other factors may influence the market price of the iPath Securities for short periods of time,<sup>11</sup> but as a result of the potential arbitrage opportunities inherent in

<sup>10</sup> Redemption dates and valuation dates may be postponed up to a maximum of five trading days upon the occurrence of certain market disruption events.

<sup>11</sup> Barclays Bank believes that such other factors may include, but would not be limited to, supply and demand for the particular class of iPath Securities; the volatility of the relevant underlying index; the market price of the components of the relevant underlying index; the rate of interest on Treasury Bills; the volatility of commodities; prices, economic, financial, political, regulatory or judicial events that affect the value of the relevant underlying index or the market price of its components; the general interest rate environment; and the perceived creditworthiness of Barclays Bank.

their structure and assuming that the redemption feature functions as intended, Barclays Bank does not expect that the iPath Securities will trade at a material discount or premium to the value of the relevant underlying indices.

(f) Dissemination of Information

1. *Dissemination of Indices Information*

As indicated above, the value of the GSCI<sup>®</sup> is calculated continuously, reported on Reuters page GSCI<sup>®</sup> (or any successor or replacement page) and is updated on Reuters at least once every three minutes during business hours on each business day; the daily settlement price of the GSCI<sup>®</sup> Index is currently reported on Reuters page GSCI<sup>®</sup> on each business day between 4:00 pm and 6:00 pm New York time; and the value of the DJ-AIG Index is currently disseminated by Dow Jones approximately every 15 seconds (assuming the value has changed within such 15 second interval) from 8:00 a.m. to 3:00 p.m. New York time, and a daily value is currently published on Reuters page AIGCII at approximately 4:00 p.m. New York time, on each business day.

2. *Dissemination of Information on Trading in iPath Securities*

Intraday "Indicative Values" meant to approximate the economic value of each series of iPath Securities will be calculated and published via the facilities of the Consolidated Tape Association by Bloomberg or a similar medium every 15 seconds throughout the NYSE trading day on each day on which the relevant series of iPath Securities are traded on the NYSE.<sup>12</sup> Additionally, Barclays Bank will calculate and publish on a website the closing Indicative Value of each series of iPath Securities on each trading day.

**II. Comparison of the iPath Securities with Exchange Traded Funds**

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<sup>12</sup> The Indicative Value calculation will be provided for reference purposes only. It will not be intended as a price or quotation, or as an offer or solicitation for the purchase, sale, redemption or termination of the iPath Securities, nor will it reflect hedging or transaction costs, credit considerations, market liquidity or bid-offer spreads. Published index levels from the sponsors may occasionally be subject to delay or postponement. Any such delays or postponements would affect the Indicative Value of the iPath Securities. Index levels provided by the sponsors will not necessarily reflect the depth and liquidity of the underlying commodities markets. For this reason and others, the actual trading price of the iPath Securities may be different from their Indicative Value.

The Commission has granted relief that is substantially similar to that requested for the iPath Securities in connection with, among others, the SPDR Trust, the MIDCAP SPDR Trust, the DIAMONDS Trust and the NASDAQ-100 Trust, the CountryBaskets Index Fund, Inc., the Select Sector SPDR Trust, iShares Trust, Vanguard Index Funds, iShares COMEX Gold Trust, PowerShares Lux Nanotech Portfolio and DB Commodity Index Tracking Fund (all of the foregoing, the "Exchange Traded Funds").

The iPath Securities share a number of fundamental features with the Exchange Traded Funds. Both the iPath Securities and the Exchange Traded Funds seek investment results by tracking the performance of an underlying commodities-based or securities-based index. Although the market price of the iPath Securities, like that of the Exchange Traded Funds, may be affected by external factors, the value of the iPath Securities and the Exchange Traded Funds is derivative of the relevant underlying index, and in each case it is expected that the market price will very closely track the value of the relevant underlying index. Moreover, the iPath Securities would be, and the Exchange Traded Funds are, registered with the Commission under the Exchange Act and listed and traded on a national securities exchange, requiring their issuers to comply with the applicable reporting requirements of the Exchange Act.

Although the iPath Securities and the Exchange Traded Funds may have different investment objectives and, as a result, may not necessarily be purchased by the same investors, the products are similarly structured with a view to attracting the same types of investors, i.e., large institutions in respect of the aggregations of securities purchasable from and redeemable through the investment vehicle, and retail and institutional investors, in respect of the exchange-traded individual securities.

### **III. Requests for Relief**

Barclays Bank respectfully requests, on its own behalf and on behalf of the NYSE and persons or entities engaging in transactions in the iPath Securities, exemptions from, or interpretive or no-action advice regarding, Section 11(d)(1) of the Exchange Act, Rule 10a-1 under the Exchange Act; Rules 101 and 102 of Regulation M under the Exchange Act; and Rule 200(g) of Regulation SHO under the Exchange Act.

#### **(a) Section 11(d)(1)**

Section 11(d)(1) of the Exchange Act generally prohibits a person who is 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. Rule 11d1-2 under the Exchange Act provides an exemption from Section 11(d)(1) for securities issued by a registered open-end investment company or

unit investment trust with respect to transactions by a broker-dealer who extends credit on such security, provided the person to whom credit has been extended has owned the security for more than 30 days.

Although Barclays Bank is not a registered open-end investment company or unit investment trust, in view of the substantial similarity between the iPath Securities and Exchange Traded Funds, Barclays Bank respectfully requests the same relief afforded by Rule 11d1-2 to Exchange Traded Funds and other registered open-end investment companies.

Accordingly, Barclays Bank respectfully requests that the staff of the Division of Market Regulation confirm that it will not recommend enforcement action to the Commission under Section 11(d)(1) of the Exchange Act against broker-dealers that treat iPath Securities, for purposes of Rule 11d1-2 under the Exchange Act, as "securities issued by a registered open-end investment company or unit investment trust as defined in the Investment Company Act of 1940" and, thereby, in reliance on the exemption contained in the Rule, directly or indirectly, extend credit or maintain or arrange for the extension or maintenance of credit on iPath Securities that have been owned by the persons to whom credit is provided for more than 30 days.

(b) Rule 10a-1

Rule 10a-1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected below the last regular-way sale price, or at such price unless such price is above the next preceding different price at which a regular-way sale was reported.

Barclays Bank believes that relief from the application of Rule 10a-1 to transactions in the iPath Securities is appropriate. Application of Rule 10a-1 to transactions in iPath Securities would not further the Rule's purpose, and exempting such transactions from the Rule would not be inconsistent with the Rule.

A primary purpose of Rule 10a-1 is to prevent the market price of an equity security from being manipulated downward by unrestricted short selling. Barclays Bank anticipates, however, that because the value of the iPath Securities is derivative of the value of the relevant underlying index, the market value of the iPath Securities will rise or fall based primarily on the changes in the value of the relevant underlying index. Any temporary disparities in market value between the iPath Securities and the relevant underlying index would tend to be corrected promptly by arbitrage activity. In addition, the iPath Securities are subject to redemption at the option of the holder on a weekly basis (in quantities of 50,000 or more). Under these circumstances, there would appear to be little economic incentive to effect short sales in the iPath Securities in order to depress

their price. Indeed, there is no "up-tick" restriction upon short sales of futures contracts on any of the underlying indices, which suggests that no valid public policy purpose would be served by imposing one upon the iPath Securities.

The trading market for the iPath Securities would be adversely affected if Rule 10a-1 operated to prevent dealers or exchange specialists from making short sales of iPath Securities to satisfy customer demand in the absence of an up-tick. Requiring an investor to utilize another means to achieve such investor's investment goals would be detrimental to the market for iPath Securities and contrary to the public interest in liquid, efficient securities markets.

Barclays Bank therefore respectfully requests an exemption from the application of Rule 10a-1 to transactions in iPath Securities.

(c) Rules 101 and 102 of Regulation M

Subject to certain enumerated exceptions, Rules 101 and 102 of Regulation M prohibit a "distribution participant", and the issuer or a selling security holder, respectively, in connection with a distribution of securities, from bidding for or purchasing or from attempting to induce any person to bid for or purchase, a "covered security" during the applicable restricted period. "Distribution participant" is defined in Rule 100(b) to include an underwriter or prospective underwriter in a particular distribution of securities, or any broker, dealer or other person who has agreed to participate or is participating in such distribution.

Barclays Bank believes that relief from Rule 101 is appropriate in respect of bids for or purchases of iPath Securities by distribution participants, and that relief from Rule 102 is appropriate in respect of bids for or purchases of iPath Securities, including redemptions of iPath Securities, by Barclays Bank and its affiliates. Application of Rules 101 and 102 to such transactions would not further the Rules' purpose, and exempting such transactions from the Rules would not be inconsistent with the Rules.

The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution. Due to the intra-day secondary market liquidity that would be provided by virtue of the NYSE listing of the iPath Securities, in combination with their weekly redeemability (in quantities of 50,000 or more), any significant disparity between the market price of the iPath Securities and their underlying value should be eliminated by arbitrage activity. Because the underlying value of the iPath Securities should be tied primarily to the value of the relevant underlying index, purchases or sales of iPath Securities in the secondary market would not impact their underlying value and therefore should not have a significant impact on their market price.



The purpose of Rule 102 is to prevent persons from manipulating the price of a security during a distribution and to protect the integrity of the offering process by prohibiting activities that could artificially influence the market for the particular security. For the same reasons discussed in the previous paragraph, Barclays Bank believes that any redemption of iPath Securities by Barclays Bank during the continuous offering would not serve to manipulate the price of nor artificially influence the market for the iPath Securities. Similarly, Barclays Bank believes that any secondary market transactions in which it or its affiliates engage during the continuous offering would not manipulate the price nor artificially influence the market for the iPath Securities.

In the absence of relief, the prohibitions of Rules 101 and 102 would impede both the redemption process and the valid and useful market and arbitrage activity which would assist secondary market trading and improve pricing efficiency for the iPath Securities.

Barclays Bank therefore respectfully requests: (1) that the Commission grant an exemption under paragraph (d) of Rule 101 to cover bids for or purchases of iPath Securities by distribution participants, or alternatively, to adopt a no-action position to such effect; and (2) that the Commission grant an exemption under paragraph (e) of Rule 102 to cover bids for or purchases of iPath Securities, including redemptions of iPath Securities, by Barclays Bank and its affiliates, or alternatively, to adopt a no-action position to such effect.

(d) Rule 200(g) of Regulation SHO

Rule 200(g) prescribes that "a broker or dealer must mark all sell orders of an equity security as 'long,' 'short,' or 'short exempt.'" A short sale must be marked "short exempt" if the seller is relying on an exemption from Rule 10a-1 like the one requested in section (a) above.

The Commission has granted relief similar to that requested hereby to the Securities Industry Association with respect to securities (including securities issued by Exchange Traded Funds) that have been granted relief from the provisions of Rule 10a-1 similar to that requested above for the iPath Securities.<sup>13</sup>

Barclays Bank respectfully requests that the staff of the Division of Market Regulation confirm that, if the relief from the provisions of Rule 10a-1 requested above is granted with respect to the iPath Securities, it will not recommend enforcement

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<sup>13</sup> See letter of James A. Brigagliano, Assistant Director of the Division of Market Regulation, to Ira Hammerman, General Counsel to the Securities Industry Association, dated January 3, 2005.

Mr. James A. Brigagliano

-13-

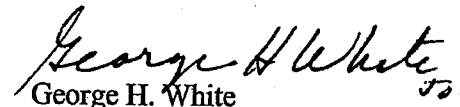
action to the Commission against a broker-dealer that marks "short", rather than "short exempt"<sup>14</sup> a short sale in iPath Securities. The requested no-action relief shall be subject to the following conditions:

- (i) For each exempt short sale, the various market centers that execute such sales have instituted procedures to "mask" the short sale character of the transaction so that they are executed as short exempt;
- (ii) A broker-dealer executing exempt short sales will mark such sales as "short", and in no event will such sales be marked as "long"; and
- (iii) The market centers will maintain an audit trail of all such trade executions, which is capable of being produced and subject to review upon request by the Commission and other appropriate regulatory authorities.

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Seven additional copies of this letter are enclosed pursuant to Securities Act Release No. 33-6269 (December 5, 1980). If you have any questions regarding this letter or need any additional information, please contact George H. White at +44 20 7959 8570 or Angel L. Saad at +44 20 7959 8444.

Yours sincerely,

  
George H. White

(Enclosures)

cc: Brona McKeown  
(Barclays Bank PLC)

<sup>14</sup> Although, pursuant to this no-action request, broker-dealers would not be required to mark such sales "short-exempt", broker-dealers could still mark such sales "short-exempt".

Mr. James A. Brigagliano

-14-

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