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

DIVISION OF
TRADING AND MARKETS

March 24, 2008

George Simon, Esq.
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, IL 60610-4764

Re: Bear Stearns Active ETF Trust
File No. TP 08-37

Dear Mr. Simon:

In your letter dated March 14, 2008, as supplemented by conversations with the staff of the Division of Trading and Markets ("Division"), Bear Stearns Active ETF Trust (the "Trust") on behalf of itself, the American Stock Exchange LLC ("Amex"), or any national securities exchange or national securities association on or through which the exchange traded shares of the Trust ("Shares"), may subsequently trade, ALPS Distributors, Inc., and persons or entities engaging in transactions in Shares, requests exemptions from, or interpretive or no-action advice regarding, Section 11(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), Rules 10b-17, 11d1-2, 15c1-5 and 15c1-6 under the Exchange Act, and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as discussed in your letter. We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

The Trust was organized on March 19, 2007, as a Delaware business trust. The Trust is registered with the Commission under the Investment Company Act of 1940 (as amended "1940 Act") as an open-end management investment company. The Trust has one initial series, the Bear Stearns Current Yield Fund (the "Fund"), an actively-managed ETF. The Fund will invest primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, reverse repurchase agreements and interest rate derivatives. While the Fund will not seek to track the performance of an underlying index, the Fund will otherwise operate in a manner substantially similar to the operation of index-based ETFs. In your letter you also represent the following:

- Shares of the Fund will be issued by an open-end management investment company that is registered with the Commission;

- The Fund will continuously redeem, at net asset value ("NAV"), Creation Unit Aggregations of 50,000 Shares, and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;

- Shares of the Fund will be listed and traded on a national securities exchange;

- The Fund will not concentrate 25% or more of the value of its assets in any one industry (excluding Treasury Securities);

- No individual security owned by the Fund (other than a Treasury Security) will constitute more than 30% of the Fund's total assets, and no five securities owned by the Fund (other than Treasury Securities) will constitute more than 65% of the Fund's assets;

- The Fund will include securities issued by at least 13 different non-affiliated issuers;

- On each Business Day, before the commencement of trading in Shares, the Fund will disclose on its website, the identities and quantities of the portfolio securities and the other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day;

- The website for the Fund will also contain the following information, on a per-Share basis: (a) the prior Business Day's NAV; (b) the reported mid-point of the bid-ask spread as of the time the NAV was calculated on the prior Business Day ("Bid-Ask Price"); (c) a calculation of the premium or discount of the Bid-Ask Price against such NAV on the prior Business Day; and (d) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund if shorter); and

- The Amex intends to disseminate, every 15 seconds, during regular Amex trading hours, through the facilities of the Consolidated Tape Association, the Intraday Indicative Value for the Fund on a per-Share basis.

Response:

Regulation M

Redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M. The Commission granted the Trust an exemption from certain provisions of the 1940 Act in order to permit the Trust to maintain its registration as an open-end investment company and to issue shares that are redeemable only in Creation Unit size aggregations of Shares.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation regulation that, subject to certain exceptions, 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, or other persons who have agreed to participate or are participating in a distribution of securities.

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Trust is a registered open-end management investment company that will continuously redeem at NAV Creation Unit size aggregations of the Shares of the Fund, and the secondary market price of the Shares of the Fund should not vary substantially from the NAV of such Shares, which is based on the value of the portfolio securities and the other assets held by the Fund, the Division hereby confirms that the Trust is excepted under paragraph (c)(4) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares 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 the Trust is a registered open-end management investment company that will continuously redeem at NAV Creation Unit size aggregations of the Shares of the Fund, the Division hereby confirms that the Trust is excepted under paragraph (d)(4) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution,

stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b).

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Commission has determined to grant an exemption from the 1940 Act to register the Trust as an open-end management investment company notwithstanding the fact that it issues Shares with limited redeemability, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.[1]

Section 11(d)(1) and Rules 11d1-2, 15c1-5, and 15c1-6

As discussed,[2] we are treating your request for relief under Section 11(d)(1) of the Exchange Act, and Rules 11d1-2, 15c1-5, and 15c1-6 thereunder, as a request that the Division confirm that it will not recommend enforcement action to the Commission if a broker-dealer treats Shares of the Fund, for purposes of the relief from Section 11(d)(1) and Rules 11d1-2, 15c1-5, and 15c1-6 provided in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) ("Class Relief Letter"), as shares of a Qualifying ETF (as defined in the Class Relief Letter).

Based on the facts and representations set forth in your letter, and in particular, the nature of the assets in the Fund, and without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if a broker-dealer treats Shares of the Fund, for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 11d1-2, 15c1-5, and 15c1-6 thereunder provided in the Class Relief Letter, as shares of a Qualifying ETF. Accordingly, with respect to Shares of the Fund, to the extent that a broker-dealer satisfies the other conditions in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

The foregoing exemption from Rule 10b-17 under the Exchange Act, the interpretive advice regarding Rules 101 and 102 of Regulation M, and the no-action position taken under Section 11(d)(1) of the Exchange Act, and Rules 11d1-2, 15c1-5, and 15c1-6 thereunder, are based solely on your representations and the facts presented to the Division, and are strictly limited to the application of those rules to transactions involving the Shares of the Fund 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 exemption from Rule 10b-17 under the

---

[1] We also note that compliance with Rule 10b-17 would be impractical in light of the nature of the Fund. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[2] Telephone conversation between Matthew A. Daigler, Division of Trading and Markets, Commission, and George Simon on March 14, 2008.

Exchange Act, and the interpretive advice regarding Rules 101 and 102 of Regulation M are subject to the condition that such transactions in Shares of the Fund, 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.

These exemptions, interpretations, and no-action positions are subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these exemptions, interpretations, and no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these exemptions, interpretations, and no-action positions. The Division 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 and state laws to, the proposed transactions.

For the Commission, by the Division of
Trading and Markets,
pursuant to delegated authority,

Josephine J. Tao
Assistant Director

Attachment

FOLEY

FOLEY & LARDNER LLP

ATTORNEYS AT LAW
321 NORTH CLARK STREET, SUITE 2800
CHICAGO, IL 60610-4764
312.832.4500 TEL
312.832.4700 FAX
foley.com

WRITER'S DIRECT LINE
312.832.4554
gsimon@foley.com EMAIL

CLIENT/MATTER NUMBER
078409-0101

March 14, 2008

Ms. Paula Jenson
Deputy Chief Counsel
Ms. Josephine J. Tao
Assistant Director, Trading Practices and Processing
Division of Trading and Markets
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

Re: Request for Exemptive, Interpretive or No-Action Relief from Certain Rules under the Securities Exchange Act of 1934

Dear Ms. Jenson and Ms. Tao:

We are writing on behalf of the Bear Stearns Active ETF Trust (the "Trust"). The Trust, on behalf of itself, the American Stock Exchange LLC ("Amex") and any other national securities exchange or national securities association on or through which the exchange traded shares ("Shares") of the Trust may subsequently trade (each such exchange referred to herein as an "Exchange"),[1] ALPS Distributors, Inc., and persons or entities engaging in transactions in Shares, including Authorized Participants (as defined below) (collectively, "Applicants") hereby requests, as appropriate, from the staff of the Division of Trading and Markets ("Staff") of the U.S. Securities and Exchange Commission ("Commission") or from the Commission, exemptions from, or interpretive or no-action advice regarding Section 11(d)(1) of the Securities Exchange Act of 1934, as amended, ("Exchange Act"), Rules 10b-17, 11d1-2, 15c1-5, and 15c1-6 promulgated under the Exchange Act and Rules 101 and 102 of Regulation M promulgated under the Exchange Act, in connection with secondary exchange transactions in Shares and the creation and redemption of Shares.

The relief requested in this letter ("Letter") is substantially similar to the exemptive or no-action relief granted by the Commission to the open-end management investment companies and to

[1] In the future the Trust may determine to list Shares on Exchanges other than the Amex. If the Trust lists Shares on Exchanges other than the Amex, Shares will be listed in accordance with Exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act. If the Shares also trade on an Exchange pursuant to unlisted trading privileges or in the over-the-counter market, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Exchange Act Section 19(b).

the unit investment trusts (registered as such with the Commission) that have been listed and traded on an Exchange as "exchange traded funds" ("ETFs").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (the "1940Act"), an open-end management investment company and was organized as a Delaware business trust on March 19, 2007. The Trust has one initial series, the Bear Stearns Current Yield Fund (the "Fund"), an actively-managed "ETF". The Shares will be listed and traded on the Amex. The Fund will invest primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, reverse repurchase agreements and interest rate derivatives. Although the market prices of Shares on the Amex or other Exchanges may vary from their net asset value ("NAV"), it is not anticipated that any deviation between the market price of Shares and their NAV will be material.

The debt securities that the Fund purchases must have the following ratings, or, if unrated, the Advisor must have determined that the securities are of a comparable quality:

- Short-term municipal obligations purchased by the Fund must be rated when purchased in the highest rating category by at least one nationally recognized statistical rating organization ("NRSRO") (for example, an S&P rating of "A-1" or a Moody's rating of "MIG-1" or, in the case of variable-rate demand obligations, "VMIG-1").

- Domestic corporate debt obligations purchased by the Fund must be rated when purchased in one of the three highest long-term rating categories by at least two NRSROs. Foreign corporate debt obligations purchased by the Fund must have the same rating as comparable domestic corporate debt obligations.

- Mortgage-backed and asset-backed securities purchased by the Fund must be rated when purchased in one of the two highest long-term rating categories by at least one NRSRO (for example, an S&P rating of "AA-" or higher or a Moody's rating of "Aa3" or higher).

- A security will be deemed to satisfy the Fund's minimum rating requirement regardless of its relative rating (for example, "+" or "-") within a major rating category.

- If a security satisfies the Fund's minimum rating requirement at the time of purchase and is subsequently downgraded below that rating, the Fund will not be required to dispose of the security. If and when such a downgrade occurs, however, the portfolio manager will determine what action, including sale of the security, is in the best interest of the Fund and its shareholders and will act on that determination.

The Fund will not concentrate 25% or more of the value of its total assets in any one industry, as that term is used in the 1940 Act, except that this restriction does not apply to obligations issued by the U.S. government, its agencies and instrumentalities or government-sponsored enterprises ("Treasury Securities"). No individual security owned by the Fund, other than a Treasury Security, will constitute more than 30% of the Fund's total assets and no five securities owned by the Fund, other than Treasury Securities, will constitute more than 65% of the Fund's total assets. The Fund will include securities issued by at least 13 different non-affiliated issuers.

The Fund will only issue or redeem its Shares in blocks of 50,000 Shares ("Creation Units") or multiples thereof. Based on the initial offering price of $100 for each Share, each Creation Unit will have an initial value of $5 million. Creation Units may only be purchased by participants in the Depository Trust Company ("DTC") who have signed an agreement with the Fund ("Authorized Participants").

The Fund will offer, issue and sell Shares in Creation Units through the Distributor on a continuous basis at the net asset value ("NAV") next determined after the receipt of an order in proper form. The NAV is expected to be determined as of the closed of the regular trading session on the Amex (ordinarily 4:00 pm Eastern Time) on each day the Amex is open for business ("Business Day"). Authorized Participants that create or redeem Creation Units will not deliver or receive portfolio securities of the Fund. Rather, payment on creation or redemption will be entirely in cash. Delivery will be effectuated through DTC as a delivery versus payment transaction between the Authorized Participant and the Fund.

On each Business Day, before the commencement of trading in Shares, the Fund will disclose on its website, which is and will be publicly accessible at no charge, the identities and quantities of the portfolio securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. In addition, the website for the Fund will contain the following information, on a per-Share basis: (a) the prior Business Day's NAV; (b) the reported mid-point of the bid-ask spread as of the time the NAV was calculated on the prior Business Day ("Bid-Ask Price"); (c) a calculation of the premium or discount of the Bid-Ask Price against such NAV on the prior Business Day; and (d) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund if, shorter).

The Applicants have been advised that the Amex intends to disseminate, every 15 seconds, during regular Amex trading hours, through the facilities of the Consolidated Tape Association, the Intraday Indicative Value ("IIV") for the Fund on a per-Share basis. The IIV is designed to provide investors with a reference value which can be used in connection with other related market information.

The IIV is calculated by an independent third party calculator by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding ETS of the Fund.

"Estimated Fund Value" is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Funds' website. To determine the IIV, the independent third party calculator will use matrix pricing, contemporaneous quotations or other methods that would be considered appropriate for pricing fixed-income securities held by registered investment companies. The Amex has informed the Applicants that the methodology used to calculate the IIV for the Funds is similar to the methodology used by Prior ETFs that track fixed-income securities indices. The Amex will not guarantee the accuracy or completeness of the IIV.

The Trust notes that the ETF structure — in which shares can be purchased from and redeemed with the issuing investment company only in large aggregations and also trade on an Exchange — is no longer novel. The Commission has considered and approved many such proposals related to ETFs for more than a decade.[2] Some of these ETFs have been trading publicly

[2] The Commission has previously granted to the American Stock Exchange exemptive and no-action relief under Rules 10a-1, 10b-7, 10b-10, 14e-5 (formerly 10b-13), 10b-17, 11d1-2, 15c1-5, and 15c1-6 under the Exchange Act with respect to the trading of SPDRs and MidCap SPDRs; Select Sector SPDRs; and the Nasdaq-100 Trust[SM]. *See* (1) letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation, to James F. Duffy, Esq., Senior Vice President and General Counsel, Amex, dated January 22, 1993 (regarding SPDRs); (2) letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation to James F. Duffy, Esq., Executive Vice President and General Counsel, Amex, dated April 21, 1995 (regarding MidCap SPDRs); (3) letters dated December 14, 1998 and December 22, 1998, respectively, from Larry E. Bergman, Esq., Senior Associate Director, Division of Market Regulation, and James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Gordon, Altman, Butowsky, Weitzen, Shalov (each regarding Select Sector SPDRs); (4) letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to James F. Duffy, Esq., Executive Vice President and Counsel, Amex, dated March 3, 1999 (regarding Nasdaq 100 Trust[SM]).

The Commission also granted similar exemptive or no-action relief to The CountryBasket[SM] Index Fund, Inc. with respect to the trading of CountryBasket[SM], *see* (1) letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation, to Michael Simon, Esq., Milbank, Tweed, Hadley & McCloy, dated March 22, 1996, and (2) letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation to Tuuli-Ann Ristkok, Esq., Donovan Leisure Newton & Irvine and Stephen K. West, Esq., Sullivan & Cromwell, dated March 22, 1996, and Foreign Fund, Inc. with respect to the trading of World Equity Benchmark Shares (now named iShares MSCI) *see* letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation, to Donald R. Crawshaw, Esq., Sullivan and Cromwell, dated May 10, 2000. The Commission granted to Amex similar exemptive and no-action relief, including relief under Rule 101 of Regulation M. *See* letter from Larry B. Bergman, Esq., Senior Associate Director, Division of Market Regulation, to James F. Duffy, Esq., Amex, dated January 9, 1998 (regarding DIAMONDS[SM]) and letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Claire P. McGrath, Esq., Vice President and Special Counsel, Amex, dated August 17, 2001. The Commission has also granted similar exemptive and no-action relief to the StreetTracks Series Trust, *see* letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation to Stuart M. Strauss, Esq., Clifford Chance US, dated September 26, 2000, the Vanguard Index Funds with respect to VIPERS, *see* letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Kathleen H. Moriarty, Esq., Carter Ledyard & Milburn, dated May 21, 2001, and the ETF Advisors Trust with respect to the trading of FITRS, *see* letter from James A. Brigagliano, Esq., Assistant Director, Division of Market Regulation, to Mary Joan Hoene, Esq., Carter Ledyard & Milburn, dated November 1, 2002.

for years and the Trust is not aware of any abuses associated with them. The prior ETFs (the "Prior ETFs") approved by the Securities and Exchange Commission (the "Commission") are substantially similar to the Fund. The primary difference between the Fund and the Prior ETFs is that the investment advisor to the Fund has discretion to select portfolio securities and the Fund has no reference index.

In connection with the secondary market trading of Shares, the Applicants request that the Commission and Staff grant appropriate exemptive, interpretive and no-action relief from Rules 101 and 102 of Regulation M, Rule 10b-17 under the Exchange Act, Section 11(d)(1) of the Exchange Act and Rules 15c1-5 and 15c1-6 under the Exchange Act in connection with secondary market transactions in Shares and the creation or redemption of Creation Units. The relief requested in this letter is substantially similar to the exemptive, interpretive or no-action relief granted by the Commission and Staff through a series of letters relating to the Prior ETFs[3], including the class relief granted to equity ETFs on November 21, 2005[4] and fixed income ETFs on April 9, 2007.[5] Thus, the

---

[3] *See* Lehman Bond Fund Letter and letters from James A. Brigagliano, Esq., Division of Market Regulation to: (1) Jack P. Drogin, Esq., Morgan Lewis & Bockius, dated August 4, 2005, File No. TP-05-88, for the iShares MSCI EAFE Growth Index Fund and iShares MSCI EAFE Value Index Fund (the "MSCI EAFE Letter"); (2) Jack P. Drogin, Esq., Morgan Lewis & Bockius, dated October 8, 2004, File No. TP-04-33, for the FTSE/Xinhua China 25 Index Fund and September 26, 2003, File No. TP-03-118, for the iShares Lehman U.S. Treasury Inflation Protected Securities and iShares Lehamn U.S. Aggregate Bond Fund (this letter does not seek relief under Rule 14e-5); (3) W. John McGuire, Esq., Morgan Lewis & Bockius, dated July 25, 2002, File No. TP02-81, for the iShares 1-3 year Treasury Index Fund, iShares 7-10 year Treasury Index Fund, iShares 20+ Year Treasury Index Funds, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund and iShares Goldman Sachs InvesTop Corporate Bond Fund (this letter did not seek relief under Rule 14e-5); (4) Donald R. Crawshaw, Esq., Sullivan and Cromwell, dated October 26, 2001, File No. TP01-236, for the iShares, Inc. MSCI Index Funds (ACFE, ACW, EMF, EMLA, Europe, Pacific, and Israel); (5) W. John McGuire, Esq., Morgan Lewis & Bockius, dated October 19, 2001, File No. TP02-07, for the iShares S&P Latin American 40 Index Fund and the iShares S&P/Tokyo Stock Price Index Fund; (6) W. John McGuire, Esq., Morgan Lewis & Bockius, dated August 15, 2001, File No. TP01-160, for the iShares MSCI EAFE Index Fund; (7) W. John McGuire, Esq., Morgan Lewis & Bockius, dated July 10, 2001, File No. TP01-161, for the iShares Goldman Sachs Technology Industry Multimedia Networking, Goldman Sachs Technology Industry Semiconductor, Goldman Sachs Technology Industry Software, Russell Midcap, Russell Midcap Growth, and Russell Midcap Value Index Funds; (8) Liza M. Ray, Esq., dated March 13, 2001, File No. TP01-106, for the iShares Goldman Sachs Technology Index Fund; (9) James T. McHale, Esq., dated February 1, 2001, File No. TP01-60, for the iShares Cohen & Steers Realty Majors and the Nasdaq Biotechnology Index Funds; (10) Mary Joan Hoene, Esq., Carter Ledyard & Milburn, dated September 5, 2000, File No. TP00-135 and December 1, 2000, File No. TP01-15, for the iShares S&P 100 and S&P Global 200. Index Funds; and (11) Kathleen H. Moriarty, Esq., Carter Ledyard & Milburn, dated May 16, 2000, File No. TP00-39 for 35 iShares Funds.

[4] Letter from Catherine McGuire, Esq., Associate Director and Chief Counsel, Division of Market Regulation, to representatives of the Securities Industry Association, dated November 21, 2005.

[5] Letter from James A. Brigagliano, Esq., Associate Director, Division of Market Regulation, to Benjamin J. Haskin, Esq., Willkie Farr & Gallagher, LLP, dated April 9, 2007.

Trust believes it appropriate that the Commission and Staff grant relief for the creation, redemption and secondary transaction in Shares of the Fund, as it has done for the Prior ETFs.[6]

I. Requests for Relief

A. Rule 101 of Regulation M

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 has expired, except as specifically permitted in Regulation M. The provisions of Rule 101 apply to underwriters, prospective underwriters, brokers, dealers and other persons who have agreed to participate or are participating in a distribution of securities. The purpose of Rule 101 is to prevent persons from conditioning the market to facilitate a distribution.

We understand that while Authorized Participants that purchase and redeem Creation Units generally will not be part of a syndicate or selling group, and while no Authorized Participant will receive fees, commissions or other remuneration from the Fund or its distributor for the sale of Creation Units, under certain circumstances Authorized Participants could be deemed to be "underwriters" or "distribution participants" as those terms are defined in Rule 100(b).

Subsection (c)(4) of Rule 101 exempts from its application, *inter alia*, redeemable securities issued by an open-end management investment company. The Fund will be registered as an open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act"). Shares of the Fund are only redeemable in whole Creation Units but the Fund will otherwise operate as an open-end management investment company. Creation Units may be created and redeemed at NAV on any Business Day. Holders of Shares also have the benefit of intra-day secondary market liquidity by virtue of the Amex listing. Because of the redeemability of Shares in Creation Units, any significant disparity between the market price of Shares and NAV should be eliminated by arbitrage activity. Thus, the secondary market price of Shares should not vary substantially from their NAV. Because the NAV of Shares is based on the market value of the Fund's portfolio, transactions involving Shares (creations from and redemptions with the Fund and purchases and sales in the secondary market) will not affect NAV. Accordingly, the rationale for

[6] Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP dated October 24, 2006, with respect to an extension of relief granted in prior letters to exchange-traded funds from Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, Rule 101 and 102 of Regulation M. and Rule 200(g) of Regulation SHO; Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP, dated June 21, 2006. *See* Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath, Esq., Vice President and Special Counsel, Amex, dated August 17, 2001 (re: Exemptive Relief for Exchange-Traded Index Funds).

exempting redeemable securities of open-end management investment companies from the application of Rule 101 is similarly applicable to the Fund's Shares.

The Trust requests that the Commission confirm that, as a result of registration of the Fund as an open-end management investment company and the redeemable nature of the Shares in Creation Units, transactions in the Shares of the Fund would be exempted from Rule 101 on the basis of the exception contained in subsection (c)(4) of such rule.

B. Rule 102 of Regulation M

The Trust also requests that the Commission confirm that, for the reasons stated above under the request for relief under Rule 101(c)(4), Shares are redeemable securities and therefore would be exempted from Rule 102 on the basis of the exception contained in subsection (d)(4) of Rule 102.

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 that particular security. For the reasons described in connection with the requested Rule 101 relief, redemption transactions and secondary market transactions in Shares are not expected to manipulate the market price of a portfolio security during a distribution of such security.

The Trust requests that the Commission confirm that, as a result of registration of the Fund as an open-end management investment company and the redeemable nature of the Shares in Creation Units, transactions in the Shares of the Fund would be exempted from Rule 102 on the basis of the exception contained in subsection (d)(4) of such rule.

C. Rule 10b-17

Rule 10b-17 requires an issuer of a class of publicly traded securities to give notice of certain specified actions (*e.g.*, dividends, stock splits and rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Subsection (c), however, states that the rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act. Except for the fact that Shares must be redeemed in whole Creation Units, Shares are redeemable securities issued by open-end investment company. Further, compliance with Rule 10b-17 would be impractical in light of the nature of the Fund because it is not possible to accurately project ten days in advance what dividend (if any) would be paid on a particular record date. Therefore, the Trust believes that the exemption under subsection (c) of Rule 10b-17 should be applicable to the Fund.

The Trust requests that the Commission confirm that, as a result of registration of the Fund as an open-end management investment company and the redeemable nature of the Shares in Creation

Units, transactions in the Shares of the Fund would be exempted from Rule 10b-17 on the basis of the exception contained in subsection (c) of such rule.

D. Section 11(d)(1)

Section 11(d)(1) was intended to address conflicts of interest arising in circumstances in which a person acts as both a broker and a dealer. The restrictions it imposes on the extension, maintenance and arranging of credit in connection with a new issue of securities are designed to protect investors from "one of the greatest potential evils inherent in the combination of the broker and dealer function in the same person, by which he has undertaken to distribute to the public."[7] Section 11(d)(1) thus seeks to prevent broker-dealers from "share pushing" -- offering credit for the purchase of newly-issued securities.

The Staff has confirmed on numerous occasions that it would not recommend enforcement action to the Commission under Section 11(d)(1) against broker-dealers that are not Authorized Participants in a particular ETF, but that effect transactions in shares of such ETF exclusively in the secondary market ("Non-AP Broker-Dealers"), and extend or maintain or arrange for the extension or maintenance of credit to or for customers on such ETF shares in connection with such secondary market transactions.[8] Such relief has been limited to Non-AP Broker-Dealers that do not (and whose associated persons who are natural persons do not), directly or indirectly (including through any affiliate of such Non-AP Broker-Dealer), receive from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(1)(5)(A), (B), or (C).

For the reasons stated above, we respectfully request that the Staff confirm that it will not recommend enforcement action against Non-AP Broker-Dealers that extend, maintain or arrange for the extension or maintenance of credit on such Shares, provided such Non-AP Broker-Dealers do not (and whose associated persons who are natural persons do not), directly or indirectly (including through any affiliate of such Non-AP Broker-Dealer), receive from the Fund any payment,

---

[7] H.R. Rep. No. 1383, 73rd Cong., 22d Sess. at 22 (1934).

[8] *See, e.g.,* letter from Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation, to James E. Duffy, Esq., Senior Vice President and General Counsel, Amex, dated January 27, 1993 ("The only compensation a broker-dealer will receive for representing a customer in purchasing SPDRs is the commission charged to that customer -- most likely the same compensation the broker-dealer would receive in connection with any stock purchase by a customer. There is no special financial incentive to a broker-dealer, other than the broker-dealer's regular commission, to engage in secondary market transactions in SPDRs, whether as principal or agent."); the MSCI EAFE Letter ("The only compensation a broker-dealer will receive for representing a customer in purchasing iShares is the commission or asset-based brokerage account fee charged to that customer, which in all likelihood is the same compensation the broker-dealer would receive in connection with any stock purchase by a customer. There is no special financial incentive to a broker-dealer, other than the broker-dealer's regular commission, to engage in secondary market transactions in iShares, either as principal or agent.").

compensation or other economic incentive to promote or sell the Shares to persons outside the Fund complex, other than non-cash compensation permitted under NASD Rule 2830(1)(5)(A), (B), or (C).

Broker-dealers that are Authorized Participants ("Broker-Dealer APs") do not have incentives to use credit to engage in the share pushing that Section 11(d)(1) was designed to address. First, Broker-Dealer APs do not have the risk exposures that underwriters face in firm-commitment underwritings of new issues. For example, Broker-Dealer APs do not have capital at risk or market exposure of the type that an underwriter has with respect to its allotment of a new offering. Broker-Dealer APs are under no obligation to place orders for any amount of Creation Units, and, therefore, they act only on a demand-driven basis. Broker-Dealer APs purchase Creation Units only as and when they or their customers need the Shares for trading or investment purposes. As a result, Broker-Dealer APs do not have an incentive to extend, maintain or arrange credit to induce purchases of securities in order to reduce funding and market risk exposures.

Second, Broker-Dealer APs do not receive the types of special sales compensation typically paid to underwriters or placement agents. They are not paid an underwriting commission, concession or sales charge from the Fund or the distributor in connection with the purchase of Creation Units from the Fund. Broker-Dealer APs may be required to pay a transaction fee for the purchase of a Creation Unit. In addition, upon sale of the Shares comprising a Creation Unit to customers or other broker-dealers, a Broker-Dealer AP receives only a customary commission (if acting as agent) or mark-up/spread (if acting as principal), determined in the same manner as in any sale of stock by a broker-dealer in a secondary market transaction. These forms of compensation do not create any special incentives for a Broker-Dealer AP to extend, maintain or arrange for the extension or maintenance of credit to investors in order to induce a purchase of the Shares.

Several features of the Shares that distinguish them from other types of securities, including mutual fund shares, offer significant protections from inappropriate sales practices or other risks that Section 11(d)(1) would otherwise address. Section 11(d)(1) prevents broker-dealers from using financing to encourage a customer to purchase newly-issued securities for which there is no ready market. In the case of the Shares, however, there is significant price transparency and liquidity. There is little risk that customers would purchase Shares on excessive credit due to an inability to accurately value the Shares. Prices for the Shares are readily available from secondary market transactions on the relevant exchange or in the OTC markets, and the NAV of the Shares along with the indicative intra-day value will be published regularly. Moreover, the Fund portfolio generally consists of liquid securities trading in transparent markets.

In addition, extensions of credit on Shares would not raise the types of concerns that the Staff has identified in the past when considering extensions of credit on mutual fund shares. In particular, the Staff has expressed concern that if credit is extended on mutual fund shares, upon a decline in value of those shares investors faced with "margin calls" would seek to redeem the shares, forcing the mutual fund to liquidate its assets and potentially creating additional "downward" price pressure

and related operational problems for the fund. We believe that this is less likely to occur with the Fund because Shares can be sold into a liquid secondary market.

There is also little risk that any credit extended on Shares by Broker-Dealer APs would affect the price of Shares. As discussed above, the issuance and redemption features of the Fund offer arbitrage opportunities that significantly limit the extent to which Shares could trade at a premium or discount to NAV. Consequently, credit on Shares is unlikely to affect the volatility of those Shares or otherwise provide a mechanism through which Broker-Dealer APs or other market participants could affect the price of Shares by influencing their supply or demand.

For the reasons stated above, we respectfully request that the Staff confirm that it will not recommend enforcement action against Broker-Dealer APs if such broker-dealers treat Shares, 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."

E. Rule 15c1-5 and Rule 15c1-6

Rule 15c1-5 requires a broker-dealer that induces the purchase or sale by a customer of a security and that is controlled by, controlling, or under common control with the issuer of such security to disclose the existence of such control before the broker-dealer enters into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary or secondary distribution of any security in which it effects any transaction in or for such customer's account or induces the purchase or sale of such security by such customer.

For the reasons discussed above, the Trust believes that disclosure by a Broker-Dealer AP of a control relationship with the issuer of a portfolio security of the Fund or of a participation in the distribution of one of the portfolio securities would impose an unnecessary and unjustifiable burden on Broker-Dealer APs engaging in transactions in Shares for their customers. There is no potential for manipulating the market price of a portfolio security by transactions in Shares because the portfolio securities are limited to nonconvertible debt securities in accordance with the ratings criteria for portfolio securities set forth on pages 1 and 2 of this letter. The same reasoning applies to granting relief from providing these disclosures to customers in connection with the creation or redemption of Creation Units. Further, application of Rules 15c1-5 and 15c1-6 could adversely affect the attractiveness of Shares to broker-dealers and, thereby, affect market liquidity and the utility of Shares as a form of basket trading.

Based on the foregoing, we respectfully request that the Staff confirm that it will not recommend enforcement action to the Commission under Rule 15c1-5 if a Broker-Dealer AP executes transactions in Shares without disclosing any control relationship with an issuer of a portfolio security. In addition, we respectfully request that the Staff confirm that it will not recommend that the Commission take enforcement action under Rule 15c1-6 if a Broker-Dealer AP

executes transactions in Shares without disclosing its participation or interest in a primary or secondary distribution of a portfolio security.

II. Conclusion

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. The forms of relief requested are virtually identical to those actions which the Commission and the Staff have taken in similar circumstances. Should you have any questions please call the undersigned at (312) 832-4554.

Very truly yours,

George T. Simon