



DIVISION OF  
MARKET REGULATION

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

August 17, 2001

Claire P. McGrath, Esq.  
Vice President and Special Counsel  
The American Stock Exchange  
55 Trinity Place  
New York, NY 10008-1872

Re: Exemptive Relief for Exchange Traded Index Funds  
File No. TP 00-133

Dear Ms. McGrath:

In your letter dated July 12, 2001, as supplemented by conversations with the staff, the American Stock Exchange (AMEX) requests no-action advice and exemptive relief with respect to specified rules under the Securities Exchange Act of 1934 (Exchange Act) for Portfolio Depositary Receipts (PDRs) and Index Fund Shares<sup>1</sup> that meet certain standards described in your letter. We are responding to your request and 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.

Specifically, the AMEX requests, on behalf of itself and persons or entities engaging in transactions involving Fund Shares, certain exemptions from, or no-action advice regarding, Section 11(d)(1) of the Exchange Act and Rules 10a-1, 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5, and 15c1-6 thereunder, and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Fund Shares and the creation and redemption of Fund Shares meeting the specified criteria.<sup>2</sup>

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<sup>1</sup> For purposes of this letter, PDRs and Index Fund Shares are collectively referred to as Exchange Traded Funds (ETFs). Shares, portfolio deposit receipts, or units of beneficial interest issued by ETFs for trading are collectively referred to as Fund Shares.

<sup>2</sup> The Commission has granted relief under these rules on prior occasions for certain ETFs, traded on the AMEX, as well as other exchanges. See letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, to James F. Duffy, General Counsel, AMEX, dated January 22, 1993 (regarding SPDRs listed on the AMEX); letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to James F. Duffy, General Counsel, AMEX, dated March 3, 1999 (regarding Nasdaq 100 Fund listed on the AMEX); letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Mary Joan Hoene, Carter, Ledyard & Milburn, dated September 5, 2000 (regarding iShares S&P 100 listed on the CBOE); letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Mary Joan Hoene, Carter, Ledyard & Milburn, dated December 1, 2000 (regarding iShares S&P 100 Global listed on the NYSE).

Response:

The relief granted herein extends to all ETFs trading on any registered national securities exchange that have obtained Rule 19b-4(e) listing approval from the Commission. ETFs meeting the following criteria are granted exemptive and/or no action relief, as more fully described below, from Section 11(d)(1) of the Exchange Act and Rules 10a-1, 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5, and 15c1-6 thereunder, and Rules 101 and 102 of Regulation M, provided that the following conditions are satisfied:

1. Fund Shares must be issued by an open-end management investment company or a unit investment trust, registered under the Investment Company Act of 1940;<sup>3</sup>
2. ETFs must consist of a "basket" of twenty (20) or more different Component Stocks,<sup>4</sup> in which no one stock can constitute more than 25% of the total value of the ETF.
3. At least 85% of the ETF must be comprised of Component Stocks that have a minimum public float value of at least \$150 million and a minimum average daily trading volume (ADTV) of at least \$1 million during each of the previous two (2) months of trading prior to formation of the relevant ETF; provided, however, if the ETF has 200 or more Component Stocks, then 75% of the Component Stocks must meet the \$150 million public float and the \$1 million ADTV thresholds;
4. Each Component Stock must be listed on a national securities exchange or the Nasdaq Stock Market, including the Nasdaq SmallCap Market;
5. Fund Shares are only to be issued or redeemed in Creation Unit aggregations of 50,000 shares or more. The value of each Creation Unit must be at least \$1 million at the time of issuance; and

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<sup>3</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>4</sup> For purposes of this letter, individual stocks that comprise the ETF basket, i.e., the stocks that are assembled to replicate the particular index that the ETF tracks, are referred to as Component Stocks.

