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Nancy M. Morris, Secretary
Securities and Exchange Commission
101 F Street NE
Washington, DC 20549-1090

RE: File S7-07-08 Proposed Rule 6c-11, 12d1-4 and 12d1-2

Dear Ms. Morris,

We appreciate the opportunity to comment on the above referenced rule proposals. Xshares Advisors LLC "Xshares" is an Investment Advisor registered under the Investment Advisor Act of 1940 and sponsor of several series of Exchange Traded Funds including, HealthShares Inc., "HealthShares" Realty Funds, Inc. "Realty" and the TDAX Funds, Inc. "TDAX" funds. Formed in 2006, we are a new advisor in the exchange traded fund market and do not at the current time manage any other funds. This perspective as an exchange traded funds only advisor is relatively unique among the many market participants that have additional lines of business in the fund management and advisory industry.

Xshares filed and obtained the necessary relief to create and sponsor exchange traded funds which became effective on December 7, 2006 (File No. 812-13449) and subsequently filed and obtained additional relief relative to various novel ETF structures, including TDAX funds. Currently we have made additional relief filings relative to Actively Managed Exchange Traded Funds, the expansion of the use of derivatives within the funds to twenty percent (20%) and the decrease in the rebalancing cycle to monthly as well as to address novel issues with respect to certain types of affiliated index ETFs. We provide this information so as to place into context our following comments. For your convenience our comments are in same sequence as the questions contained within the request.

Index Based ETFs

We strongly support the Commission's proposal to provide exemptions for index-based ETFs organized as open-end investment companies. We agree with the Commission that the current ETF orders contain the conditions to effectively preserve the purposes of the Investment Company Act. Although to date not all index-based orders require identical disclosure requirements either not requiring full transparency of the index constituents

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and weights or not requiring full disclosure of all portfolio holdings on a daily basis. Xshares currently operates funds that require both types of disclosure based upon the relationship of the index provider and the fund advisor. We believe that transparency of at least the portfolio holdings provides appropriate disclosure for effective arbitrage and trading and is important for the market and the fund shareholders in the early days post launch of new funds. While we support the Commission's efforts to create the widest exemptions as possible under the proposed rule, we believe that there are circumstances in which the market and fund shareholders will be better served by full transparency. To address this issue we believe the Commission should impose at a minimum disclosure of one or the other for new funds that will rely on the proposed exemptions contained in the filing.

Fully Transparent Actively Managed ETFs

We support the Commission's proposal to include fully transparent actively managed ETFs. We have commented above and throughout this letter that we believe that transparency and disclosure are the keys to effective arbitrage that benefits all fund shareholders. An effective arbitrage leads to lower spreads and more efficient trading, effectively lowering costs to shareholders. Full transparency creates concerns for active managers concerned with the potential for front running the changes in the funds they are managing. We recognize these concerns and suggest that transparency may be a gating issue for some managers when considering whether to launch actively managed funds relying on the proposed rule. We recommend the Commission include transparency in the final rule and continue through the exemptive process the review of less transparent products. This will give the Commission and fund companies time to ascertain the effects of the requirement and control of less transparent product developments.

Liquidity

The effect of portfolio liquidity on the potential for deviation between ETF share market price and NAV is a much debated topic among sponsors, market makers and investment professionals. Depending upon which position a market participant occupies the deviation may be more of less important. Xshares as a sponsor strives to create products that provide the smallest deviation while at the same time achieve the investment objectives of the fund. Our discussions with market makers indicate that the more liquid the portfolio constituents, the smaller the deviation as the costs associated with creation and redemption are slightly better in more highly liquid securities. Similarly, investment advisors and brokers consider this deviation when analyzing the overall performance and return from investments in ETFs and incorporate this analysis into their decision making when making product selections. This existing analysis is an efficient and effective process and is ultimately of significant benefit to investors.

Considering this we believe that the current 15% liquidity guidelines for all open end funds are sufficient when applied to exchange traded funds and do not recommend that a different standard be applied to ETFs. The commission should always be concerned about substantial discounts or premiums as a matter of general oversight of this rapidly

growing sector of the fund industry, yet these deviations when considered and disclosed as a material risk within the fund disclosure materials mandated under the current regulatory framework will permit investors and advisors to appropriately evaluate ETFs in light of their investment objectives. We agree that there is substantially more market activity in ETFs that track broad based indexes, we also see a need for specialty products that allow advisors and investors to create more defined and focused investment allocations while mitigating single security risk within certain economic sectors.

Finally, liquidity or illiquidity of constituent securities is always scrutinized during the development process of new Exchange Traded Funds and each sponsor applies their own screening mechanisms during this process. Increased liquidity requirements will alter this process and potentially inhibit product design and creation. Liquidity of the basket constituents may at times affect the assembly of securities for a purchase basket, arbitrage and operation of the ETF. Yet with the increasing sophistication of security lending and order execution systems, we believe that authorized participants have the tools and systems necessary to create and redeem ETFs operating under the current 15% liquidity limitations. The current standards also provide limits to the development of specialty ETFs to those that are appropriate and reasonable and the industry can continue to develop these specialty ETFs that serve narrow investment purposes that may satisfy particular investment needs of certain investors.

Actively Managed ETFs

Xshares currently has filed for additional relief from the Act to create and issue Actively Managed ETFs. Our request contemplates fully transparent funds with a daily disclosure of portfolio holdings through both the funds website and the NSCC basket files. We note that the Commission is reviewing but has not approved less transparent actively managed ETFs. Our considerations within our filing relative to transparency have been that market makers and participants will factor this lack of transparency into their pricing and participation decisions and less transparent products will have wider spreads as the efficiency of the arbitrage is significantly affected by the lack of transparency. This lack of pricing efficiency will translate into wider spreads, lower returns and higher net costs to investors similar to those of closed end funds. The market is the ultimate arbiter of the success or failure of innovative new products and we believe that less transparent actively managed ETFs will be less attractive and ultimately less successful that fully transparent funds and authorization for these types of products should not be built into the proposed Rule but rather carefully considered by the Commission on a case by case basis through the exemptive order process.

Unit Investment Trusts

We do not believe that the rule should be expanded to include Unit Investment Trusts "UITs", as the significant differences in construction and aftermarket participation in these products create a different set of concerns for market participants with regard to

pricing, operational costs, trading and market making. We recommend that if the Commission determines there is a market need for these products, that separate consideration and proposals be formulated to address them.

Transparency

Transparency has to date been a key ingredient of the success and growth of the ETF market. Our current exemptive order provided for complete transparency of our fund holdings which are posted daily to each fund family website. Through our custodian and sub advisor we also publish daily basket files through NSCC available to authorized NSCC participants. Additionally we publish the index constituents and weightings on a daily basis. This heightened transparency is unique to ETF sponsors that are affiliated with their underlying index provider, such as the many, HealthShares funds, which track indexes designed and provided by our affiliate. Based upon our experience and our belief that market participants will continue to seek greater transparency for all fund products we believe that full transparency is a benefit to all investors and should be uniform across all ETFs. Sampling strategies employed by certain ETF sponsors reduce transparency and trading efficiency. This ultimately is evidenced in wider spreads and increased costs to investors. Uniform disclosure and transparency among all market participants will mitigate some of these issues and lead to a more efficient market for exchange traded funds.

Our research indicates that actively managed fund managers are significantly uncomfortable with full transparency and believe that it will promote front running by savvy traders and hedge funds and affect their ability to effectively manage their funds. We suggest that there is evidence to the contrary when reviewing the overall capability of fund managers to outperform their stated benchmark. The expanding trading marketplace, both in terms of globalization and expansion of trading hours throughout any twenty four hour trading day, continues to increase available pools of liquidity that a manager may access when creating or liquidating a position within any fund. This growing trend and the full implementation of Regulation NMS further support the expansion of access to liquidity. Additional trading strategies can be employed at the portfolio trading desk level to provide efficient and cost effective means for managers to address these concerns. We do not believe that full transparency will inhibit managers ability to efficiently implement their investment strategies with the general exception of highly illiquid or esoteric markets such as sub Sahara frontier markets or limited and inefficient commodities markets, for example.

Internet disclosure is a highly efficient and acceptable method of providing market participants with a great deal of information including fund holdings and objectives. Our understanding of market research performed by industry organizations and paid consultants is that a vast majority of market participants and investors obtain their investment information via the internet. The data shows that this trend is accelerating and is evident across all types of investors and age categories and that this trend is accelerating both domestically and globally. Considering this we believe that internet disclosure is sufficient and does not limit that ability of any investor to obtain the

information they seek or require when performing analysis or making investment decisions. Other types of disclosure, such as basket disclosure through NSCC is limited to NSCC members only and therefore we believe may have the effect of putting certain investors in an advantageous position which is contrary to the overall trend of transparency and full disclosure to all market participants. Therefore our opinion is that full disclosure via the internet has the greatest ability to provide uniform disclosure and transparency to as many market participants as possible and levels the playing field for all investors.

The disclosure of liabilities for ETFs that employ leverage would be a valuable disclosure for investors evaluating these types of products. Generally leverage can magnify both potential gains and losses in any investment strategy and must be disclosed as a material risk in a leveraged fund prospectus and disclosure documents. The knowledge of the potential risk does not necessarily allow all investors to specifically quantify the actual risk and additional disclosure by those funds employing leverage should be considered. The disclosure of liabilities as part of the daily holdings files would provide investors with greater transparency and the ability to better understand the actual risk contained within a leveraged product.

The requirement to disclose portfolio holdings more often that once per trading day would further heighten active managers concerns regarding front running and efficiently managing funds and does not appear to us to improve transparency. Many managers use multiple execution methods when accumulating or liquidating positions and incomplete orders would skew an interim holding disclosure. Market makers and arbitrageurs would also incorporate this uncertainty into their pricing schemes and potentially widen spreads increasing costs to investors. This proposal would further create additional infrastructure and technology burdens upon the infrastructure of custody, administration, clearing and accounting. Investors may also become confused when trying to understand any premium or discount incurred when purchasing funds especially in volatile markets, again with the potential effect of increasing costs to the consumer.

Permitting advance portfolio disclosure by rule is not of great concern when viewed in the context of passively managed ETFs that are replications of the underlying index. Generally index providers announce index changes well in advance of implementation, and this is effectively advance disclosure. This issue may be of greater concern to ETFs that are not managed to an index or employ sampling strategies and would reinforce the front running issues held by many active managers. There is significant regulation and guidance concerning the disclosure of material non-public information and the implications of this type of advance disclosure in this context is quite significant. There is also the possibility that a manager makes an advance disclosure and, for reasons beyond their control, the manager is unable to implement the changes thereby creating issues with the efficiency of the underlying arbitrage and trading spreads.

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Listing on a National Exchange and Dissemination of Intraday Value

Requiring ETF shares to be listed on a national securities exchange provides a level of confidence by market participants relying on the availability of current and accurate pricing information. We agree that the rule should contain this requirement to maintain this confidence and is the basis for the efficiency in pricing by market participants. The current listing Exchanges for ETFs formulate and implement rules and regulations regarding listing, delisting and suspension of trading for the products that they seek to list. This process has evolved over a long period of time and is efficient and effective. Listing exchanges are required to seek approval of rule changes, including those surrounding initial and continued listing, from the SEC and appropriate self regulatory organization and additional rulemaking may create regulatory conflict and confusion therefore, we believe the current framework is sufficient and further rulemaking unnecessary. The arbitrage functions in a delisted ETF would become less efficient as the trading in the fund shares would become less efficient and those relying on a transparent and active market in the ETF shares would be less likely to continue to participate. Decisions regarding the liquidation of a delisted fund should be left to the Board and sponsors of the fund who as interested parties have the greatest economic interests and risks in any liquidation decision. Any additional requirements mandated by rule would discount these interests and not be in the best interest of the shareholders.

The dissemination of intraday value or IOPV in fifteen second intervals is meant to provide a measure of the deviation between the previous NAV and the effect of market movement during the trading day. This measure further indicates the potential premium or discount relative to the current quotation and provides meaningful information to investors and advisors. Although many use this information as a guideline for trading purposes, some are not even aware that the calculation exists and is disseminated over the tape. Many traders and market makers operate their own systems to calculate these values in real time to assist them in the pricing of the ETFs they are trading. Permitting third party vendors unaffiliated with the listing exchange to post IOPVs creates unnecessary risks. There is real question as to whether third party vendors would be capable of creating real time IOPV calculations that can be disseminated on the tape efficiently. Pricing and cost pressures may result in vendors making compromises related to technology and connectivity that are not in the best interests of shareholders. The calculation of the intraday value should be based upon the portfolio in the same manner as the daily NAV is calculated; in this case the value will be more reflective of what the investor actually owns. This methodology is employed by Xshares for our current funds and we believe it is the most accurate presentation of intraday fund share value and would be unaffected should this method be prescribed by rule. The current method of calculation and disseminating is sufficient for general investor purposes and operates efficiently so a minimum frequency by rule is not needed.

Marketing

The current sales literature requirements contained within existing exemptive orders and proposed to be contained within the new rule is sufficient to help most investors avoid confusion between ETFS and traditional mutual funds and extending this requirement is reasonable. We strive hard to differentiate ourselves from traditional mutual fund and attempt to reinforce this through our sales and advertising literature. Other sponsors appear to follow similar methods and we believe this process will continue. Many sponsors, including Xshares, also spend a great deal of time educating investors and advisors about their products and how they are distinct from traditional funds and other investment products, such as non '40 ACT exchange traded products, closed end funds and structured products. The information generally covers the distinction between passively and actively managed investments. The educational programs are fairly broad with multiple levels of information from the basic information to strategic presentations incorporating the use of ETF in asset allocation models. Considering these educational efforts and activities by ETF sponsors and current disclosure rules and guidance, we believe sponsors will include additional disclosure to investors specifically identifying each fund as either active or passive in their filings and marketing materials. Should the Commission decide to reinforce by rule the distinction between active and passive ETFs we would not object as we intend to highlight the distinction should we decide to sponsor actively managed ETFs

Conflicts of Interest

Current regulation of advisors and funds regarding conflicts of interest, self dealing and the anti fraud provisions provide significant guidance by both rule and interpretation to properly address the potential conflicts that may arise in the day to day management of all 1940 Act mutual funds and by extension all ETFs and advisors registered with the SEC under the Act. There is also significant guidance in the existing exemptive orders further addressing this and additional issues that sponsors with affiliated index providers for their products.

Conflicts that may arise with an advisor to a fully transparent ETF we believe will be similar to those of traditional actively managed funds but considering that these type of products are only now appearing in the market it is difficult to perceive what if any additional issues advisors may face. We suggest that new rulemaking in this area may ultimately be redundant to the regulation and guidance already in place and that the Commission defer additional regulation addressing their concerns about conflicts for a later date to give the advisors time to gain experience and knowledge with respect to any potential or perceived conflicts.

Affiliated Index Providers

Xshares is one of the unique ETF advisors that sponsors ETFs managed to indexes developed by an affiliate. We received extensive guidance in our exemptive orders concerning the separation of, and creating appropriate firewalls between, index personnel

and advisor personnel. Our solution has been to hire outside consultants to handle the administration of the proprietary indexes, adding significant expense and creating some operational issues with our sub advisors and lead market makers.

We understand the Commission's point of view but believe there are significant regulations in place that address potential abuses with respect to the affiliated indexes and ETFs. We further believe that one size does not fit all and that advisors should have the ability to develop compliance systems that meet the needs of their particular circumstance, something that the mandated firewall rules of the affiliated index exemptive orders do not permit. We agree with the Commission that these existing regulation and the adoption of appropriate internal controls in compliance with the federal securities laws and rules of the exchanges and self regulatory organizations sufficiently address such concerns and additional regulation through rulemaking unnecessary.

Issuance of Redeemable Securities

We believe that the extension of relief from existing exemptive orders to the proposed rule in its treatment of redeemability is appropriate.

The determination of the minimum or maximum creation unit size should remain with the ETF advisor. Our experience has shown that there are many factors to this decision in addition to effective and efficient arbitrage. The decision tree begins with the analysis of the index securities and their trading characteristics such as lot restrictions for foreign securities and trading costs, the creation model is then adjusted to the lowest possible size taking into account these considerations and tested for efficiency. The proposal to "establish creation unit sizes the number of which is reasonably designed to facilitate arbitrage" seems to describe the process that we apply when determining the basket size and is appropriate, as is the definition of arbitrage. Incorporating additional elements into the definition does not appear necessary at this time.

The process of determining the creation unit size is highly analytical and may be unduly burdensome to a fund board of directors that may lack the technical and analytical expertise to make a finding as suggested by the proposal. When presenting the information concerning creation unit size the process and background information concerning the analysis and determination are reviewed and discussed with the board members to provide them with a basic understanding of the process and characteristics of the underlying securities.

We believe the method and review generally described above is sufficient and instituting numerical thresholds with regard to minimum or maximum creations size present an opportunity to limit the efficiency of this process and the creativity of new product development. The concerns with respect to smaller- or larger-sized creation units are sufficiently addressed by requiring ETFs to establish creation unit sizes that facilitate arbitrage and the exemptions provided in the proposed rule are appropriate regardless of creation size. Efficient arbitrage is reflected in the volume and velocity of actual creations

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and redemptions within an individual fund and is further reflected in the bid/ask spread over time, we do not see evidence that the size of the creation unit has significant impact; rather the efficient arbitrage is of greater importance. The minimum transaction fees associated with the creation and redemption of fund shares are designed to shift the costs onto the participant initiating the creation or redemption such that frequent traders bear the costs of their activities and not the long term holders of the fund. The creation fee anticipates the potential effects of significant creation and redemption volumes without regard to the actual creation unit size therefore we do not believe that additional measures need to be taken to protect long term shareholder interests.

The definition of "basket assets' contained in the proposal is accurate and adequate in the context of ETFs and the ability to accept cash in lieu provides additional flexibility to market participants engaged in arbitrage activities. The cash creator is subject to a mark to market to protect the fund and the shareholders. The option to accept cash creations by the advisor allows some flexibility to the advisor with respect to tax implications of creating transactions within the fund. ETFs strive to be fully invested at all times and a cash creation can help a fund pay vendor costs without the need to liquidate fund assets thereby avoiding the potential tax implications and transaction costs of such asset sales. We do no se any reason to set conditions for such activities as they reduce the flexibility of the advisor and may lead to higher costs and/or unavoidable tax consequences.

The current method of disseminating basket information on the NSCC bulletin board is sufficient for the purpose of the basket information. Authorized participants are the primary user of such information and understand the differences between the basket and the portfolio holdings. Publically publishing the basket will lead to potential confusion among investors. Sponsors are sensitive to the need to have a high correlation between the basket and the portfolio and therefore ensure timely and accurate basket information is in their best interest to encourage market participation and mandating the frequency with which ETFs must update the basket is unnecessary.

Trading of ETF Shares at Negotiated Prices

The current relief provided from Section 22(d) and Rule 22c-1 allowing trading of ETF shares at negotiated prices is fundamental and is appropriate for ETFs under the rule. The concerns of the Commission seem to be appropriately addressed in the proposed rule providing the necessary relief while providing suitable limitations and would suggest incorporating this section of the proposal into the final rule.

In Kind Transaction between ETFs and Certain Affiliates

The extension of this relief permitting an affiliate to transact with the fund as an Authorized Participant into the proposed rule is potentially beneficial to fund investors by increasing competition at the Authorized Participant ("AP") level which, in turn, would theoretically increase the efficiency of the arbitrage mechanism. The structure of the ETF requires that all Authorized Participants transact with the fund in the same manner. There is no opportunity for an affiliate engaging in purchases and redemptions of creation

units to engage in transactions that would negatively impact all shareholders of the fund. Following this logical path we would support the extension of this relief to affiliated broker-dealers as they would also be required to transact with the fund on the same terms as an unaffiliated AP.

We appreciate the concerns regarding any perceived ability of an affiliate to influence security selection by the ETF but suggest that this would be violation of existing rules and regulations regarding manipulation of securities trading and material non-public information, which mandate internal policies and procedures for all advisors and broker dealers. These requirements related to segregation and proper handling of sensitive information reinforce the obligations of advisors and broker-dealers and are sufficient when properly maintained and applied.

Additional Time for Delivering Redemption Proceeds

Permitting the postponement of payment for redemption proceeds in ETFs redemption basket that contain a foreign security in the event of a foreign holiday in the proposed relief is reasonable and allows some flexibility for the fund when necessary. Although it may be rarely used we believe it is important to include and provides additional security to the fund. Considering that Authorized Participants will be the only ones impacted by such relief, disclosure of such relief would be more appropriate in the SIA rather than the prospectus or marketing material. We agree with the definition of "foreign security" as proposed as well as the notion that twelve calendar days is sufficient.

Delivery of Prospectus

We concur with the Commission that many broker-dealers deliver the fund prospectus rather than the product description in connection with the sale of ETF in the secondary market. Our experience is that this policy has generally been put into place by the broker-dealers compliance group to address disclosure liability concerns. Considering this we support the elimination of the product description and required prospectus delivery provided that such requirements would be implemented such that it does not create unnecessary burdens pending the Commission's final decisions and rulemaking on the Summary Prospectus issue. We understand that this may be difficult but suggest that interim steps that would require change in the information delivered to investors would create confusion and frustration and would oppose such steps.

Amendments to Form N-1A

We support the proposed revisions to Form N-1A as appropriate to better serve the information needs of the retail investor and further agree that it is important to distinguish between secondary market purchasers and Authorized Participants. Disclosures relevant only to Authorized Participants may confuse retail investors so we also support elimination of these sections since Authorized Participants, as sophisticated investors, do not rely solely on the fund's prospectus or SAI for this information.

Purchasing and Redeeming Shares

Relative to our comment above concerning Form N-1A creation and redemption information is the type of potentially confusing information that should be eliminated from the fund prospectus and SIA. The information is highly technical and an understanding of the parties involved and their place and function in the industry is necessary for it to be meaningful. Authorized Participants enter into agreements with the fund distributor and custodian which contain the necessary information and procedures for the creation and redemption process, which varies and is unique to each fund. Maintaining it in the disclosure documents or requiring a supplementary prospectus for their benefit is also unnecessary.

The possibility of ordinary investors transacting directly with an ETF would change the disclosure dynamics to ensure that such investors receive the additional information concerning the creation and redemption process. The ability of an individual investor to transact directly with an ETF can be considered to be dependent upon the creation unit value and the establishment of a dollar threshold would be reasonable as a trigger for the additional disclosure requirement.

Total Return

The proposal to add a requirement for market price returns while seemingly innocuous may affect the ability of an individual investor to understand their actual return. The return of any one individual investor is tied to their individual purchase price similar to yield calculations for debt instruments. We agree that market price returns may be different than NAV returns but do not support their requirement as part of the proposal. Furthermore the definition using closing price is problematic to those funds with low trading volumes that may trade infrequently. In this situation the NAV may be significantly different as calculated using the closing prices of the constituent securities. Similarly ETFs invested in foreign securities listed on exchanges that close prior to US markets and subject o currency fluctuations may find significant deviation between the NAV and market price returns. For these reasons we do not support the addition of a market price return requirement.

Premium/Discount Information

Notwithstanding our comments above regarding total return and considering that we already calculate and disclose such information on the fund websites, we believe that the disclosure of this information is useful to investors and support this requirement. We calculate this measure using the closing midpoint against the NAV and would recommend that this be the part of the definition. We further believe that disclosure on the fund website would be sufficient and requiring the additional disclosure in the fund prospectus is not needed.

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Conforming Amendments

We have commented above that we do not support requiring ETFs to calculate multiple performance values and that the appropriate place for historical premium /discount information is the fund website. Considering this we agree that if this requirement is adopted that the annual report and the prospectus should be consistent with regard to the calculation of performance.

Underlying Index

The Commission's concerns regarding tracking error disclosure should not be the catalyst to change the existing requirement to compare the fund to a benchmark and therefore we oppose the requirement for an index based ETF to compare its performance to its underlying index. Tracking error should be calculated and disclosed separately to address these concerns and any requirement for the disclosure of tracking error should uniformly apply to all index funds.

Summary Prospectus

We support permitting ETFs to use the Summary Prospectus as previously proposed by the Commission. The ability to make the prospectus a more reader friendly document that provides the most important information in a more easily understood format would be of great benefit to investors in general. While we have reservations as to the timing and implementation of this proposed change as discussed in our comments regarding the elimination of the product description, we believe that the Summary Prospectus would be generally beneficial to all fund investors. Investors would continue to be able to access to additional information should they want through the SAI and the fund filings. We do not agree with the requirement for disclosure of the top ten holdings as we fully disclose all holdings on a daily basis on the fund website and such a disclosure is redundant.

Amendments of Previously Issued Exemptive Orders

The proposed rules do not include all relief granted under previously issued exemptive orders and funds already available rely on the specifics of these orders, not the proposal. We must strongly oppose the rescission of the previously granted exemptive relief and in any case where the exemptive relief is broader than the proposed rule we would rely on the previously granted relief to provide continuity for existing shareholders. Should the Commission impose such changes we do not see how such funds operating under unique exemptive order would continue to operate. We have previously commented above concerning the prospectus delivery requirements and would not oppose rescission of that specific relief from Section 24(d).

Control

The issues surrounding the concept of control are significant and while we generally support the Commission's proposal as it relates to these conditions we are concerned that

there is the possibility of inadvertent violation when considering all the entities that may be deemed an affiliate. We agree with the twenty-five percent threshold for mirror voting but suggest that accurately calculating the percentage may be difficult at best. The full and regular flow of information between entities that may be affiliated through business relationships rather than corporate ties or ultimate common control is a significant challenge. Considering ETF shares are book entry only securities the possibilities of significant creations or redemptions of fund shares on any given trading day has the potential to change the calculation in real time and may make an accurate calculation functionally impossible. We also suggest that in light of all regulation there may be unknown conflicts with other bodies of regulation such as ERISA. The ability to dovetail regulation is always a significant challenge and we suggest that a narrowing of the definition of affiliate may be a reasonable solution.

Redemptions

We Support the Commission's proposal to prohibit redemption of fund shares acquired in reliance on the proposed rule. We believe that the greatest potential for fund coercion exists in this situation. Funds that acquire ETF shares generally do so through the secondary market and we do not see any reason that they may be unable to liquidate the acquired shares in the same manner.

Complex Structures

The prohibition that an acquired ETF should not itself be a fund of funds is reasonable and we support the proposal of this limitation. We also agree with the proposal to allow ETFs to exclude money market funds in this calculation thus providing some flexibility for managers that may be faced with significant cash creation as a function of product structure. We are an ardent supporter of full disclosure and support the Commission with regard to the disclosure of investment policy as it relates to invest in other funds although the notion of a hard limit of 10 percent by rule may cause problems in unusual market conditions or certain circumstances and may reduce the ability of a manager to protect their shareholders.

Layering of Fees

We support the Commission's proposal to place limits and service fees imposed by the acquiring and that is not necessary to impose conditions to waive the part of the fee equal to any compensation received from the ETF in connection with the its investment. We further believe that considering the method of calculating performance by acquiring funds that investors will receive sufficient information to assess performance.

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Investments in Affiliated ETFs Outside the Fund Complex

We support the proposed relief form restrictions on affiliated transactions for funds that acquire five percent or more of an ETF because such affiliates are treated the same as non-affiliates in creation and redemption transactions.

Use of Affiliated Broker to Effect Sales

We agree and support the Commission's proposed relief concerning the use of an affiliated broker based on the reasoning that the affiliated broker-dealer is unlikely to be in a position to take advantage of the acquiring fund based upon the affiliation. We would take this relief one step further and extend to the ETF lead market maker that provides the seed capital and initial trading market for the ETF. Seed capital has become a bottleneck in the ETF market for many reasons including both market structure changes and concerns over inadvertent violations and statutory underwriting liabilities. Relief from Rule 17e-1 would not relieve best execution obligations by both the fund and the market maker, nor would it create the ability for undue influence or coercion of the fund, during the critical initial stages post launch of new ETFs.

Affiliated Fund of Funds investment in ETFs

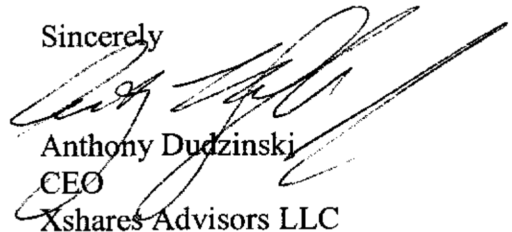
Since 12d1-d already permits investment in other funds under with prescribed limit we support the Commission's proposal to include ETF shares in the list of permissible investments.

Affiliated Fund of Funds investments in Other Areas

The Commission's proposal to allow funds to invest in assets other than securities under Rule 12d1-2 will aid in the further creativity of the ETF industry and encourage new product development. We support the proposal and the potential flexibility it may provide to sponsors and managers to include options, futures, and other derivative instruments.

Xshares Advisors would like to thank the Commission for the opportunity to express our thoughts, concerns and support on this proposal. We are always available to discuss our views or provide additional information if requested. Please contact me or our Chief Compliance Officer, Richard Berenger (212) 867-7400 if you have any questions or follow up requests.

Sincerely



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