



**MUTUAL FUND DIRECTORS FORUM**  
*The FORUM for FUND INDEPENDENT DIRECTORS*

May 21, 2008

Ms. Nancy Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

Re: Proposed Rulemaking Regarding Exchange Traded Funds, File No. S7-07-08

Dear Ms. Morris:

The Mutual Fund Directors Forum (“the Forum”)<sup>1</sup> appreciates the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (“Commission” or “SEC”) respecting “Exchange Traded Funds.”<sup>2</sup> The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors today and serves as an independent vehicle through which Forum members can express their views on matters of concern.

*Comments*

Most generally, we commend the Commission for proposing to codify the relief that it routinely grants to permit the introduction and trading of exchange traded funds (“ETFs”). As a general matter, we believe that codifying routine exemptive relief provides important benefits to funds, and to their shareholders and independent directors. In particular, doing so aids in the maintenance of a level playing field among funds and advisers while at the same time helping to ensure that beneficial relief which, for purposes of the Investment Company Act, is “necessary or appropriate in the public interest and consistent with the protecting of investors” is available to all funds and,

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<sup>1</sup> The Forum’s current membership includes five hundred seventy-five independent directors, representing seventy-nine independent director groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

<sup>2</sup> Proposed Rulemaking: Exchange Traded Funds, Securities Act Rel. No. 8901 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] (“Release”).

ultimately, all fund shareholders.<sup>3</sup> It also relieves funds and their shareholders of the unnecessary cost of applying separately for routine relief that the Commission is almost certain to grant. We therefore encourage the Commission not only to adopt this rule, but also to continue the process of codifying types of exemptive relief that are now granted routinely by order.

We also commend the Commission for its willingness, as demonstrated in the Release, to eliminate unnecessary conditions when it codifies otherwise routine relief. Independent directors have ultimate responsibility for the funds they oversee and act solely on behalf of the shareholders of those funds. Among other duties, independent directors seek to ensure that the costs investors pay for the services they receive are reasonable and oversee their funds' compliance with the law. Because directors need the flexibility to respond to the specific issues faced by their individual funds, we continue to believe that, the Commission should be careful not to impose unnecessary regulatory requirements on fund directors.

The Commission's proposal regarding ETFs provided an excellent example of how the Commission can eliminate unnecessary burdens that it might otherwise impose on fund directors. As part of the proposed ETF rule, the Commission is proposing to relax the limits that section 12(d) of the Act otherwise places on investments in ETFs by other registered funds. In doing so, the Commission has explicitly chosen not to codify various requirements it imposed on the boards of both the investing and investee funds in prior orders granting similar relief. These requirements, described in footnotes 205-208 of the Release, require that fund directors (at both the ETF and investing fund level) make specific findings designed to accomplish two goals: preventing the acquiring fund from exercising impermissible control over the acquired fund and protecting the shareholders of the funds from paying unnecessary fees and expenses as a result of an acquiring fund's investment in ETF shares.<sup>4</sup>

We agree with the Commission that it need not impose these specific requirements on directors. In particular, we agree that the unique nature of ETFs – the manner in which they are traded, and the manner in which shares are sold and redeemed through the “creation unit” process – make it unlikely that an acquiring fund could use the threat of redemption to control or otherwise harm the ETF. Likewise, while the issues of duplicative and excess fees and expenses are important, reviewing all fees and expenses is already within the broad fiduciary responsibility of directors. The requirements of specific findings on these issues that have been imposed in prior orders are simply unnecessary. Directors, acting on behalf of shareholders, are fully able to review whether investing in ETFs will create unnecessary or duplicative fees, and simply do not need to have additional bureaucratic requirements imposed upon them.

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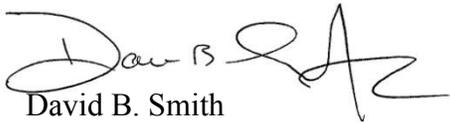
<sup>3</sup> Section 6(c) of the Investment Company Act of 1940, 15 USC §80a-6(c).

<sup>4</sup> Release at 14636.

Finally, we recognize the importance of this proposal to the ongoing process of innovation in the fund industry. In recent years, the Commission's ETF relief has allowed the introduction of numerous innovative products that have increased the investment choices available to investors and, in many cases, lowered the costs paid by such investors. This proposal, which would provide effective relief for a wide range of ETFs, including fixed income ETFs and certain types of actively-managed ETFs is a noteworthy step forward. However, ultimate adoption of this proposal should not be the endpoint of innovation with respect to exchange-traded products. While the proposal provides a template for many standard types of ETFs, it certainly does not exhaust the range of potentially beneficial products that could be offered. The Commission should therefore continue actively to use its ability to issue orders under section 6(c) of the Act actively to encourage further innovation in this area. Only by doing so will the process of innovation continue to benefit fund investors.

Again, the Forum very much appreciates the opportunity to comment on this important proposal. We would be happy to discuss any of the issues raised in our comment letter with you or the Commission's staff at any time.

Sincerely

A handwritten signature in black ink, appearing to read "David B. Smith". The signature is fluid and cursive, with a large initial "D" and "S".

David B. Smith  
Executive Vice-President

cc: The Honorable Christopher Cox, Chairman  
The Honorable Paul S. Atkins  
The Honorable Kathleen L. Casey

Andrew J. Donohue, Director, Division of Investment Management