

November 18, 2008

Via Electronic Mail to rule-comments@sec.gov

Ms. Florence E. Harmon
Acting Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Proposed Rule for Exchange-Traded Funds: File No. S7-07-08

Dear Ms. Harmon:

Dow Jones & Company, Inc. ("Dow Jones") and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") submit this letter in response to a request for comment by the Securities and Exchange Commission (the "Commission") on the recent proposed rules (together the "Proposed Rule") under the Investment Company Act of 1940 (the "Act") relating to exchange-traded funds ("ETFs"). The comments submitted herewith are limited to Proposed Rule 6c-11(e)(4)(i) and (v), which would impose new requirements on ETFs or their index providers that, for the reasons addressed below, Dow Jones and S&P believe are unwarranted and unnecessary.

Proposed Rule 6c-11(e)(4)(v)

Both Dow Jones and S&P have, at great time and expense, over many years, developed innovative equity and other indexes that track a wide variety of market sectors and serve as preeminent benchmarks for stock market and other markets' performance. Prominent examples are the S&P 500 Index and the Dow Jones Industrial Average. Significant resources are expended by both entities in the design, management, maintenance and distribution of such indexes, and it is now well established that these efforts, and the resulting indexes, constitute legally protected intellectual property. *See, e.g., Standard & Poor's Corp. v. Commodity Exchange, Inc.*, 683 F.2d 704 (2d. Cir. 1982); *Board of Trade v. Dow Jones & Company, Inc.*, 456 N.E.2d 84 (Ill. 1983).

Dependent upon those rights, both Dow Jones and S&P, among many additional competitors, have developed robust licensing programs entitling a wide array of third parties to use various of these indexes in index-based, investable products. The range of such products runs the gamut from cash-settled index options and futures to exchange-traded funds. Over the past 25 years, the number and variety of proprietary indexes and index-based financial products has proliferated, to the great advantage of the investing public.

The Commission's Proposed Rule 6c-11(e)(v) would permit certain index-based and actively managed ETFs to commence operation without having to obtain exemptive orders from the Commission, as is currently required.¹ To promote transparency, the Proposed Rule would require an ETF relying on the proposed exemptions to either:

- (i) disclose on its Internet Web site each business day the identities and weightings of the component securities and other assets held by the fund, or
- (ii) have a stated investment objective of obtaining returns that correspond to the returns of a securities index, whose provider discloses on its Internet Web site the identities and weightings of the component securities and other assets of the index. The Web page of the ETF or index provider, as the case may be, must be publicly accessible at no charge.²

Dow Jones and S&P oppose adoption of this proposed rule insofar as the above requirements, as we describe below, would deprive index providers like Dow Jones and S&P of their valuable intellectual property rights without fair compensation. We believe that the Commission's objectives can be achieved without such web site disclosures of the components and weighting of the indexes.

Dow Jones and S&P recoup their significant investments in the development and maintenance of their proprietary indexes in a variety of manners, including from the licensing of the indexes that underlie financial instruments such as ETFs and the trading of cash derivatives such as futures and options based on such instruments. In addition, Dow Jones and S&P license the dissemination of both index values and information about their indexes, such as components and weightings, often utilizing the services of third-party data vendors. These licensing agreements typically restrict licensees from disclosing the data in the manner contemplated by the Commission's proposed rule. This is a valuable revenue source for Dow Jones and S&P and, if curtailed, would require these entities to seek to make up these lost revenues from other sources – a prospect that is both uncertain and could in itself have a detrimental impact on the range of investable products now available.

Beyond the adverse impact that adoption of this proposed rule would threaten to Dow Jones' and S&P's index businesses, we agree with the comments of several others who have pointed out that portfolio composition files and/or the "in kind basket" necessary to arbitrage ETFs should suffice, without additional need for Web site disclosures of the components and weighting of the underlying index, to satisfy the Commission's transparency objectives.³

For the above reasons, Dow Jones and S&P urge the Commission to eliminate the web site disclosure requirements regarding index components and weightings from its final rule.

Proposed Rule 6c-11(e)(4)(i)

¹ See Proposing Release at 1.

² Proposed Rule 6c-11(e)(4)(v).

³ See, e.g., NYSE Arca comment letter (May 29, 2008) at 5; Investment Company Institute comment letter (May 19, 2008) at section I.B.1(a).

ETFs that rely on Rule 6c-11 would need to satisfy, in relevant part, the additional requirements: (1) that the shares issued by the ETF be approved for listing and trading on a national securities exchange and (2) that the national securities exchange disseminate the current value of an ETF on a per share basis at regular intervals throughout the trading day (the "Intraday Value").⁴

Since certain exchange rules currently require an Intraday Value be disseminated by one or more market data vendors,⁵ Dow Jones and S&P do not see any need for a federal rule mandating that such values be disseminated by the national securities exchange on which the ETF trades. Dow Jones and S&P provide calculation services to ETF providers to create and disseminate IIVs via market data vendors. This service generates revenue for Dow Jones and S&P and supports their respective index businesses.

If, however, the Commission believes a federal requirement related to dissemination of the Intraday Value must be adopted, we believe the Commission should adopt a rule codifying current practices that permit Intraday Values to be disseminated via one or more major market data vendors.

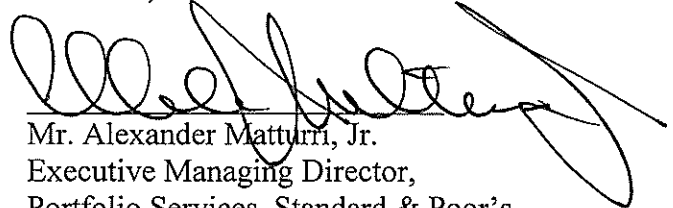
Conclusion

Dow Jones and S&P respectfully request that the Commission consider our comments to the proposed rule changes set forth above.

Respectfully submitted,



Mr. Michael A. Petronella
President, Dow Jones Indexes



Mr. Alexander Matturi, Jr.
Executive Managing Director,
Portfolio Services, Standard & Poor's

⁴ See Proposed Rule 6c-11(e)(4)(i).

⁵ See, e.g., NYSE Arca comment letter (May 29, 2008) at 9.