



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

DIVISION OF  
MARKET REGULATION

March 8, 2007

Domenick Pugliese, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
75 E. 55th Street  
New York, NY 10022

Re: HealthShares Composite Exchange-Traded Fund  
File No. TP 07-49

Dear Mr. Pugliese:

In your letter dated March 7, 2007,<sup>1</sup> as supplemented by conversations with the staff of the Division of Market Regulation (the "Staff"), HealthShares, Inc. (the "Company") on behalf of itself, the HealthShares Composite Exchange-Traded Fund (the "Fund"), the New York Stock Exchange, and any other Exchange on which HealthShares may subsequently trade, and persons or entities engaging in transactions in HealthShares, requests exemptive, interpretive, or no-action advice regarding Rules 10a-1, 10b-17, and 14e-5 under the Securities Exchange Act of 1934 (the "Exchange Act"), Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO, in connection with secondary market transactions in HealthShares on the New York Stock Exchange or on any other Exchange on which HealthShares may subsequently trade, and the creation and redemption of Creation Unit Aggregations of the Fund.

The Company is an open-end management investment company that was organized as a Maryland corporation on February 8, 2006. The Company's registration statement for the Fund has been declared effective by the Commission.<sup>2</sup> The Fund will invest at least 90% of its assets in the common stocks of companies in the Underlying Index (or in American Depositary Receipts or Global Depositary Receipts based on securities of international companies in the Underlying Index). The Fund will attempt to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities' weightings in the Underlying Index. The investment objective of the Fund is to provide investment results that, before expenses, correspond generally to the total return of the Underlying Index.<sup>3</sup>

---

<sup>1</sup> 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.

<sup>2</sup> File Nos. 333-131842 and 811-21855.

<sup>3</sup> The HealthShares Composite Exchange-Traded Fund tracks the performance of the HealthShares Composite Index.

Response:

Rule 10a-1

Rule 200 of Regulation SHO defines "short sale," and Rule 10a-1 under the Exchange Act governs short sales generally. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting system, and prohibits short sales with respect to these securities unless such sales occur on a "plus tick" (that is, a price above the price at which the immediately preceding sale was effected), or "zero-plus tick" (that is, at the last sale price if it was higher than the last different price). Rule 10a-1 is designed to prevent the market price of a stock or other "reported security," as defined in Rule 11Aa3-1(a)(4) under the Exchange Act, from being manipulated downward by unrestricted short selling.

On the basis of your representations and the facts presented, in particular the composite and derivative nature of HealthShares, it would not appear that trading in HealthShares would be susceptible to the practices that Rule 10a-1 is designed to prevent. In particular, the Company anticipates that the market value of HealthShares will rise or fall based on changes in the net asset value of the component securities of the Underlying Index and supply and demand. Accordingly, the Commission hereby grants an exemption from Rule 10a-1 to permit sales of HealthShares without regard to the "tick" requirements of Rule 10a-1.

We note that the exemption from Rule 10a-1 would not apply to secondary market portfolio sales of component securities made in connection with the redemption of HealthShares. In addition, this exemption is contingent upon the Fund maintaining at least 20 component stocks.

Rule 200(g) of Regulation SHO

Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any equity security as "long," "short," or "short exempt." Rule 200(g)(2) requires that a short sale order must be marked "short exempt" if the seller is relying on an exception from the tick test of Rule 10a-1 of the Exchange Act or any short sale price test of any exchange or national securities association.

Accordingly, in conjunction with the exemption granted above to permit sales of HealthShares without regard to the "tick" requirements of Rule 10a-1, on the basis of your representations and the facts presented, and without necessarily concurring in your analysis, the Staff will not recommend to the Commission enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks "short," rather than "short exempt," a short sale that is effected in HealthShares, subject to the following conditions:

- i. For each exempt short sale, the various market centers that execute such sales have instituted procedures to “mask” the short sale character of the transaction so that they are executed as short exempt;
- ii. Such market centers monitor on a regular basis to confirm that any such product or transaction continues to meet the conditions for the exemptive relief and re-institute the price test for any product or transaction that fails to satisfy such conditions;
- iii. A broker-dealer executing exempt short sales will mark such sales as “short,” and in no event will such sales be marked “long;” and
- iv. The market centers will maintain an audit trail of all such trade executions, which is capable of being produced and subject to review upon request by the Commission and other appropriate regulatory authorities.

#### 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 Company exemptions from certain provisions of the Investment Company Act of 1940 in order to permit the Company to register as an open-end investment company and to issue shares that are redeemable only in Creation Unit Aggregations of HealthShares.

#### Rule 101 of Regulation M

Generally, 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, except as specifically permitted in the Regulation.<sup>4</sup> 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, particularly that the Company is a registered open-end management investment company that will continuously redeem at net asset value Creation Unit Aggregations of HealthShares; and that the secondary market price of HealthShares should not vary substantially from the net asset value of such HealthShares, which is based on the value of the component securities in the Underlying Index and will be computed on a daily basis, the Staff hereby confirms that the Company is excepted under paragraph (c)(4) of Rule 101 of Regulation M, thus permitting persons who may be

---

<sup>4</sup> 17 CFR 242.101.

deemed to be participating in a distribution of HealthShares to bid for or purchase HealthShares during their participation in such distribution.<sup>5</sup>

The Staff also confirms the interpretation of Rule 101 of Regulation M that a redemption of Creation Unit Aggregations of HealthShares and the receipt of component securities in exchange therefor by a participant in a distribution of HealthShares would not constitute an "attempt to induce any person to bid for or purchase a covered security, during the applicable restricted period" within the meaning of Regulation M, and therefore would not violate Regulation M.

#### 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 Company is a registered open-end management investment company that will redeem at net asset value Creation Unit Aggregations of HealthShares, the Staff hereby confirms that the Company is excepted under paragraph (d)(4) of Rule 102 of Regulation M, thus permitting the Fund to redeem HealthShares during the continuous offering of HealthShares.

#### Rule 14e-5

Rule 14e-5 under the Exchange Act, among other things, prohibits a person making a tender offer or exchange offer for any equity security from directly or indirectly purchasing or

---

<sup>5</sup> We note that Regulation M does not prohibit a distribution participant and its affiliated purchasers from bidding for and purchasing component stocks in accordance with the exceptions contained in paragraphs (b)(6) and (c)(1) of Rule 101. Rule 101(b)(6)(i) excepts basket transactions in which bids or purchases are made in the ordinary course of business in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased. Rule 101(b)(6)(ii) excepts adjustments to such a basket made in the ordinary course of business as a result of a change in the composition of a standardized index. Also, Rule 101(c)(1) excepts transactions in actively-traded securities, that is, securities that have an average daily trading volume value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million; provided however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant.

arranging to purchase any subject or related securities except as part of the offer, from the time the offer is publicly announced until its expiration.

Rule 14e-5 explicitly includes dealer-managers within the rule's definition of "covered person." Accordingly, while acting as dealer-manager of a tender offer for a component stock, a dealer-manager is prohibited from purchasing or arranging to purchase that component stock until the expiration of the offer.

On the basis of your representations and the facts presented, particularly that purchases or redemptions of HealthShares would not appear to result in the abuses at which Rule 14e-5 is directed, and that any bids or purchases by dealer-managers would not be effected for the purpose of facilitating a tender offer, the Commission hereby grants an exemption from Rule 14e-5 to permit any person acting as dealer-manager of a tender offer for a component stock to: (1) redeem HealthShares in Creation Unit Aggregations to the Company for component stocks that may include a security subject to the tender offer; and (2) purchase HealthShares during such offer.<sup>6</sup>

#### 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, particularly that the Commission has determined to grant an exemption from the Investment Company Act of 1940 to register the Company as an open-end management investment company notwithstanding the fact that it issues HealthShares with limited redeemability, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Company with respect to transactions in HealthShares.<sup>7</sup>

---

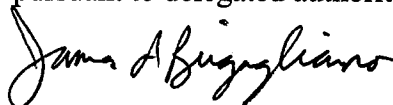
<sup>6</sup> The Staff also confirms its no-action position under Rule 14e-5 when a broker-dealer (including a member or member organization of the AmEx or other national securities exchange), acting as a dealer-manager of a tender offer for a component stock, purchases such component stock in the secondary market for the purpose of tendering them to purchase a Creation Unit Aggregation of Shares, if such transactions are effected as adjustments to such a basket in the ordinary course of business as a result of a change in the composition of the Underlying Index.

<sup>7</sup> 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 Company to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

The foregoing exemptions from Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, interpretations of Rules 101 and 102 of Regulation M, and no-action positions taken under Regulation SHO are based solely on your representations and the facts presented to the Staff, and are strictly limited to the application of those rules to transactions involving HealthShares 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 exemptions from Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, interpretations of Rules 101 and 102 of Regulation M and no-action positions taken under Regulation SHO are subject to the condition that such transactions in HealthShares, any component security, 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 Staff 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 Staff 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 Market Regulation,  
pursuant to delegated authority,



James A. Brigagliano  
Associate Director

Attachment

Atlanta  
Beijing  
Brussels  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Stamford  
Tokyo  
Washington, DC

(212) 318-6295  
domenickpugliese@paulhastings.com

March 7, 2007

59860.00003

**VIA UPS NEXT DAY AIR**

Mr. James A. Brigagliano  
Associate Director  
Office of Trading Practices and Processing  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1001

SECURITIES AND EXCHANGE COMMISSION  
RECEIVED

MAR 13 2007

DIVISION OF MARKET REGULATION

Re: Request for Exemptive, Interpretive and No-Action Relief from Rules 10a-1; 10b-17; and 14e-5 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO promulgated under the Exchange Act: HealthShares™ Composite Exchange-Traded Fund.

Dear Mr. Brigagliano:

HealthShares™, Inc. (the "Company") is an open-end management investment company that was organized as a Maryland corporation on February 8, 2006. The Company has registered 20 investment series ("Funds") and plans to offer more series in the future. This letter is submitted on behalf of the following HealthShares™ fund portfolio: HealthShares™ Composite Exchange-Traded Fund (the "Fund"). The shares of the Fund are referred to herein as "HealthShares™".

The Company has an effective registration statement for the Fund<sup>1</sup> which was previously filed with the Commission in order to register the Fund and its HealthShares™ under the 1940 Act and the Securities Act of 1933, as amended ("Securities Act"). The Company

<sup>1</sup> The Company is registered under the Investment Company Act of 1940, as amended (the "1940 Act"). On February 14, 2006, the Company filed with the Securities and Exchange Commission (the "Commission") a Registration Statement for the Funds on Form N-1A under the Securities Act of 1933, as amended, and under the 1940 Act relating to the Funds (File Nos. 333-131842 and 811-21855) (the "Registration Statement"). The Registration Statement was declared effective by the Commission on January 12, 2007.

Mr. James A. Brigagliano

March 7, 2007

Page 2

intends to list the HealthShares™ of the Fund on the New York Stock Exchange (the “NYSE”) in accordance with NYSE Rules 703.16<sup>2</sup> and 1100<sup>3</sup>.

On March 1, 2006 the Company filed with the Commission an application under Section 6(c) of the 1940 Act and on August 23, 2006 the Company filed with the Commission an Amended and Restated application under Section 6(c) of the 1940 Act, for an exemption from Sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the 1940 Act and Rule 22c-1 under the 1940 Act, and under Sections 6(c) and 17(b) of the 1940 Act for an exemption from Sections 17(a)(1) and (a)(2) of the 1940 Act, File No. 812-13264 (the “Application”). An order (the “Order”) granting the relief requested in the application was issued by the Commission on December 7, 2006 (IC-27549). The Order permits the Company to offer the Funds. On May 2, 2006, the Company filed with the Commission a second application under 6(c) of the 1940 Act, on February 12, 2007 the Company filed with the Commission an Amended and Restated application under 6(c) of the 1940 Act, for an exemption from Section 12(d)(1)(A) and (B) of the 1940 Act, and under 6(c) and 17(b) of the 1940 Act for an exemption from Sections 17(a)(1) and (2) of the 1940 act, File No. 812-13288 (the “Second Application,” and together with the Application, the “Applications”). The Second Application will permit (i) registered open-end management investment companies and unit investment trusts (“Purchasing Funds”) that are not part of the same “group of investment companies” as the Company within the meaning of Section 12(d)(1)(G)(ii) of the 1940 Act, and that are not sponsored or advised by the Advisor (defined herein) or an entity controlling, controlled by or under common control with the Advisor to acquire, and the Company, principal underwriter and certain broker-dealers to sell, HealthShares™ beyond the limits of Sections 12(d)(1)(A) and (B) of the 1940 Act, and (ii) Purchasing Funds to engage in certain purchase and redemption transactions in Creation Unit Aggregations (defined herein) directly with a Fund that might otherwise be prohibited by Section 17(a) of the 1940 Act.

The market prices of exchange-traded HealthShares™ are expected to vary from their net asset values (“NAVs”). The Fund will issue and redeem HealthShares™ at their NAVs only in aggregations of a specified number of HealthShares™, as further discussed below. Given the opportunities for arbitrage, it is not anticipated that any deviation between market price and NAV will be material.

---

<sup>2</sup> The Fund meets the listing standards of Rule 703.16 of the NYSE Listed Company Manual, as amended, See SEC Rel. 34-55113.

<sup>3</sup> If HealthShares™ also trade on a national securities exchange (an “Exchange”) registered with the Commission or the Nasdaq Stock Market, Inc. (the “Nasdaq”) pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Exchange Act Section 19(b).



Mr. James A. Brigagliano

March 7, 2007

Page 3

In connection with the secondary market trading of those HealthShares™ to be offered by the Company, the Company, on behalf of itself, the NYSE, and persons or entities engaging in transactions in HealthShares™ (collectively, the “Applicants”), as the case may be, hereby request that the Commission and its staff (the “Staff”) grant the appropriate exemptive, interpretive and no-action relief from Rules 10a-1, 10b-17 and 14e-5 under the Exchange Act, and Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO (“Regulation SHO”) under the Exchange Act, in connection with secondary market transactions in HealthShares™ on the NYSE, or any other Exchange on which the HealthShares™ may subsequently trade, and the creation or redemption of Creation Unit Aggregations (as defined below in Part II.A) of HealthShares™. The Commission and Staff have previously granted such relief to other exchange-traded funds (“ETFs”) not related to the Company through a series of letters.<sup>4</sup> The Commission has also granted

---

<sup>4</sup> See Letters from James A. Brigagliano, Division of Market Regulation to: (1) Jack P. Drogin, dated August 4, 2005, File No. TP05-88, for iShares MSCI EAFE Growth Index Fund and iShares MSCI EAFE Value Index Fund (relief identical to the relief requested by this letter); (2) Stuart M. Strauss, dated October 25, 2005, File No. TP 06-07, for the PowerShares Lux Nanotech Portfolio; (3) Kathleen H. Moriarty, dated March 9, 2005, File No. TP04-19, for the Vanguard Emerging Markets Stock Index Fund, Vanguard European Stock Index Fund and Vanguard Pacific Stock Index Fund; (4) Stuart M. Strauss, dated March 2, 2005, File No. TP05-15, with respect to PowerShares WilderHill Clean Energy Portfolio Fund; (5) Ira Hammerman, dated January 3, 2005, File No. TP-05-11 (for letters (2) through (5), relief granted from Regulation SHO (identical to the relief from Regulation SHO requested by this letter) with regard to exchange-traded funds that had previously been granted an exemption from a price test); (6) Jack P. Drogin, dated October 8, 2004, File No. TP04-33, for the iShares FTSE/Xinhua China 25 Index Funds (for letters (6) through (16), relief is substantially similar to the relief requested by this letter); (7) Jack P. Drogin, dated September 25, 2003, File No. TP03-118, for the iShares Lehman U.S. Treasury Inflation Protected Securities Fund and iShares Lehman U.S. Aggregate Bond Fund (this letter did not seek relief under Rule 14e-5); (8) W. John McGuire, dated July 25, 2002, File No. TP02-81, for the iShares 1-3 Year Treasury Index Fund, i-Shares 7-10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, 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); (9) Donald R. Crawshaw; dated October 26, 2001, File No. TPO1-236, for the iShares, Inc. MSCI Index Funds (ACFE, ACW, EMF, EMLA, Europe, Pacific, and Israel); (10) W. John McGuire, dated October 19, 2001, File No. TP02-07, for the iShares S&P Latin America 40 Index Fund and the iShares S&P/Tokyo Stock Price Index (“TOPIX”) Index Fund; (11) W. John McGuire, dated August 15, 2001, File No. TP01-160, for the iShares MSCI EAFE Index Fund; (12) W. John McGuire, dated July 10, 2001, File No. TP01-161, for the iShares Goldman

(con’t...)

Mr. James A. Brigagliano

March 7, 2007

Page 4

such relief to two other portfolios of the Company; HealthShares™ Emerging Cancer Exchange-Traded Fund and HealthShares™ Cardio Devices Exchange-Traded Fund.<sup>5</sup>

On October 24, 2006, in a letter issued to PowerShares Exchange-Traded Fund Trust<sup>6</sup> (the “PowerShares Letter”), the Commission granted relief<sup>7</sup> with respect to the aforementioned Exchange Act provisions and rules thereunder. This relief supercedes relief that had been previously granted to the American Stock Exchange, LLC (“AMEX”). ETFs listed and traded on an Exchange may rely upon the relief granted in the PowerShares Letter without the submission of a 1934 Act exemptive/no-action request if such ETFs meet certain conditions, including the following: (a) at least 70% of the ETF must be comprised of component stocks that have a minimum average daily trading volume (“ADTV”) of at least \$1 million during each of the previous two months of trading prior to formation of the relevant ETF and, at least 70% of the ETF must be comprised of component stocks that have a minimum public float value of at least \$150 million; provided, however, if the ETF has 200 or more component stocks, then 50% of the component stocks must meet the \$1 million ADTV and \$150 million public float thresholds.<sup>8</sup> Although the Fund

---

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; (13) Liza M. Ray, dated March 13, 2001, File No. TP01-106, for the iShares Goldman Sachs Technology Index Fund; (14) James T. McHale, dated February 1, 2001, File No. TP01-60, for the iShares Cohen & Steers Realty Majors and the Nasdaq Biotechnology Index Funds; (15) Mary Joan Hoene, dated September 5, 2000, File No. TP00-135 and December 1, 2000, File No. TP01-16, respectively for the iShares S&P 100 and S&P Global 100 Index Funds; and (16) Kathleen H. Moriarty, dated May 16, 2000, File No. TP00-39 for 35 iShares Funds.

<sup>5</sup> See, Letter from James A. Brigagliano, Division of Market Regulation to Domenick Pugliese, dated January 22, 2007, File No. TP07-31 for the HealthShares™ Emerging Cancer Exchange-Traded Fund and the HealthShares™ Cardio Devices Exchange-Traded Fund.

<sup>6</sup> See, Letter from James A. Brigagliano, Assistant Director of Market Regulation, to Stuart M. Strauss, Esq., dated October 24, 2006.

<sup>7</sup> Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath, Vice President and Special Counsel, AMEX, dated August 17, 2001 (the “AMEX Letter”).

<sup>8</sup> The Commission has granted class relief with respect to Section 11 (d)(1) and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 of the Exchange Act to certain “Qualifying ETFs”. See, letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to the Securities Industry Association, dated November 21, 2005. The Funds meet the require-  
(con’t...)

Mr. James A. Brigagliano

March 7, 2007

Page 5

will be listed on the NYSE, the Fund does not meet the requirements of the PowerShares Letter set forth above, as the Fund will not meet the average daily trading volume and public float criteria.<sup>9</sup> Therefore, the Fund cannot rely on the relief provided in the PowerShares Letter with respect to Rules 10a-1, 10b-17 and 14e-5 of the Exchange Act and Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO promulgated under the Exchange Act and the Company, on behalf of the Fund, hereby requests relief from the aforementioned Exchange Act rules.

The Company notes the creation and issuance by an investment company of shares or units that individually trade on an Exchange, but that in large aggregations can be purchased from and redeemed with the issuing investment company, is no longer novel. The Commission has for more than a decade considered and approved many such proposals. Some of these exchange-traded products have been trading publicly for years, and the Company is not aware of any abuses associated with them. Indeed, several of the products have been so embraced by investors that they routinely are among the highest volume securities on the Exchanges on which they trade.

I. Parties

A. The Fund

The Fund seeks to track the performance, before fees and expenses, of a particular benchmark index.<sup>10</sup> The Fund intends to qualify as a “regulated investment company” for purposes of the Internal Revenue Code.

The Fund will invest at least 90% of its assets in the common stocks of companies in the Underlying Index, or in American Depositary Receipts (“ADRs”) or Global Depositary Receipts (“GDRs”) based on securities of international companies in the Underlying In-

---

ments of “Qualifying ETFs” under this letter and are therefore relying on this letter with respect to these provisions.

<sup>9</sup> Except for the minimum average daily trading volume and public float criteria of the PowerShares Letter set forth above, the Fund meets all other conditions of the PowerShares Letter. With respect to the minimum average daily trading volume and public float tests, the Fund satisfies this test with respect to more than 21% of its portfolio. As noted in Notes 4 and 5 above, the relief requested herein is substantially similar to the relief granted to other ETFs including other portfolios of the Company.

<sup>10</sup> The HealthShares™ Composite Exchange-Traded Fund tracks the performance of the HealthShares™ Composite Index (an “Underlying Index”).

Mr. James A. Brigagliano

March 7, 2007

Page 6

dex. The Fund may also invest up to 10% of its assets in futures contracts, options on futures contracts, options, swaps on securities of companies in the Underlying Index, as well as cash and cash equivalents, such as money market instruments (subject to the applicable limitations of the 1940 Act). The Fund will attempt to replicate the Underlying Index by matching the weighting of securities in its portfolio with such securities' weightings in the Underlying Index. The Fund may also sample, rather than replicate, the Underlying Index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield. If the Fund pursues a sampling strategy, as just described, it will continue to invest at least 90% of its assets in the common stocks, ADRs or GDRs of the companies in the Underlying Index.<sup>11</sup> The Fund will consist of approximately 80 securities, matching the Underlying Index as described below.

1. Underlying Index Description and Methodology

The Underlying Index is an index of U.S. and foreign common stocks of healthcare, life sciences or biotechnology companies that have been included in the HealthShares™ Autoimmune-Inflammation Index, the HealthShares™ Cancer Index, the HealthShares™ Cardio Devices Index, HealthShares™ Cardiology Index, the HealthShares™ Dermatology and Wound Care Index, the HealthShares™ Diagnostics Index, the HealthShares™ Emerging Cancer Index, the HealthShares™ Enabling Technologies Index, the HealthShares™ GI/Gender Health Index, the HealthShares™ Infectious Disease Index, the HealthShares™ Metabolic-Endocrine Disorders Index, the HealthShares™ Neuroscience Index, the HealthShares™ Ophthalmology Index, the HealthShares™ Orthopedic Repair Index, the HealthShares™ Patient Care Services Index and the HealthShares™ Respiratory/Pulmonary Index (collectively, the "Composite Eligible Indexes") by the Index Administrator and therefore are included in the HealthShares™ Composite Index.

XShares Group LLC (the "Index Creator"), the parent of the Funds' investment adviser, XShares Advisors LLC, is the creator of the Underlying Index and each Composite Eligible Index and has created each Composite Eligible Index using an investment approach known as "vertical" investing. "Vertical" investing seeks to categorize companies within a particular healthcare, life sciences or biotechnology index by focusing on each company with regard to the diagnosis of diseases, the developments of drugs, treatments, therapies and delivery systems, and the development of enabling/research tools and technologies for use in the healthcare, life sciences or biotechnology sectors.

The Index Creator, based on its own proprietary intellectual model, has established specific, objective inclusion/exclusion criteria (the "Index Composition Methodology") that

---

<sup>11</sup> HealthShares™ of one Fund may not be exchanged for HealthShares™ of another Fund.

Mr. James A. Brigagliano

March 7, 2007

Page 7

an issuer must meet in order to be included in a Composite Eligible Index or in the Underlying Index. The Underlying Index, and each Composite Eligible Index, will be administered by Standard & Poor's (the "Index Administrator"), which will employ these criteria to determine the composition of each Index. The Advisor has engaged BNY Investment Advisors as a Sub-Advisor to be responsible for the day-to day management of the Fund's portfolio, which involves principally reconfiguring the portfolio of the Fund, typically quarterly, to reflect any reconfiguration in the Underlying Index by the Index Administrator.

When determining the composition of the Underlying Index and each Composite Eligible Index, the Index Administrator relies on many sources of information, including information obtained from the BioCentury and MedTrack databases. The BioCentury and MedTrack databases are independent, generally available databases that provide a vast amount of data for healthcare, life sciences and biotechnology companies, including information regarding products, clinical trials, pipeline development, patent and other information.

For each Composite Eligible Index, the Index Administrator will screen companies to eliminate those that fall outside of the market capitalization ranges applicable to that Index. The Index Administrator will then employ the remainder of the Index Composition Methodology for each Composite Eligible Index to identify the companies that satisfy these criteria. Typically, the largest of these companies (determined by market capitalization) are included in a Composite Eligible Index, with a minimum of 22 companies in each Composite Eligible Index. The initial companies selected for inclusion are weighted equally at inception, and are thereafter weighted based upon the individual company's market value relative to the overall portfolio market value of the relevant Composite Eligible Index (*i.e.*, price weighted). Maximum weighting for any security in a Composite Eligible Index is typically 15%. When a company's weighting exceeds 15% of the overall Index portfolio, the Index Administrator will reduce such company's weighting to 10%, with the 5% "excess" applied equally to all remaining component securities in the Composite Eligible Index. Minimum weighting for a security in a Composite Eligible Index is 2.5%. When a security's weighting falls below 2.5%, the Index Administrator will increase the security's weighting to its initial weighting or 5%, whichever is less, with the required increment taken equally from all the remaining component securities.<sup>12</sup> The Underlying Index consists of stocks of the 80 largest companies by market capitalization taken from the top five companies in market capitalization from each of the Composite Eligible Indexes, arranged in alphabetical order. Information about the Underlying Index, including the component securities in Underlying Index and the value of the securities in the Under-

---

<sup>12</sup> The minimum weighting for a security may fall below 2.5% in the event a rebalancing would require the ETF relying on such Index to make filings under Section 13(g) of the Exchange Act.

Mr. James A. Brigagliano  
March 7, 2007  
Page 8

lying Index, is posted throughout the trading day every 15 seconds and is available through Reuters.

i. HealthShares™ Composite Index

The HealthShares™ Composite Index is an index of U.S. and foreign common stocks of healthcare, life sciences or biotechnology companies that have been included in the Composite Eligible Indexes.

As of **January 31, 2007** the HealthShares™ Composite Index component securities had a float-adjusted market capitalization of approximately \$329.96 billion. The average float-adjusted market capitalization was approximately \$4.12 billion. The ten largest constituents represented approximately 31% of the index weight. The five highest weighted securities represented 19% of the index weight.

*HealthShares™ Composite Index as of January 31, 2007:*

Index Composition	Total Index Size (Float-Adjusted Billions)	329.96
Concentration	Number of Components	80
	Percent in Ten Largest Components	31%
Size of Companies -	Market Cap. – Median	3.57
Float-Adjusted	Market Cap. - Arithmetic Average	4.12
\$ Billions	Market Cap. - Smallest Stock Held	0.33
	Market Cap. - Largest Stock Held	20.16
	Market Cap. - \$ -Weighted Average	6.54
Index		
Characteristics	Portfolio P/E	47.9
	Portfolio P/E Excluding Negative Earnings	N/A
	Port. P/E - I/B/E/S 1 yr Forecast EPS	53.76
	Portfolio P/E - Normalized Earnings	N/A
	Portfolio Price/Book	7.84
	Dividend Yield	0.18

Index Constituents

Name	Index Weight
Health Net, Inc.	6.11
Davita Inc	3.82
SCHWARZ PHARMA AG	3.39
Manor Care Inc.	3.04
Endo Pharmaceuticals Hldg	2.84
Kyphon Inc	2.71
Amylin Pharmaceuticals	2.61
LCA Vision Inc.	2.16
Dade Behring Hldgs Inc	2.14

Mr. James A. Brigagliano

March 7, 2007

Page 9

United Therapeutics Corp	2.07
Bard (C.R.) Inc.	2.07
Respironics Inc	2.03
Edwards Lifesciences Corp.	1.96
Solvay SA	1.94
FIELMANN AG	1.93
St Jude Medical	1.93
Pharmion Corp	1.91
Varian Medical Systems	1.86
Theravance Inc	1.83
GENMAB A/S	1.71
Conor Medsystems Inc	1.63
The Cooper Companies	1.62
Advanced Medical Optics, Inc.	1.53
Smith & Nephew PLC (ADR)	1.53
Dentsply International	1.51
ACTELION LTD-REG	1.47
Human Genome Sciences	1.45
Cephalon Inc	1.36
Thoratec Corp	1.35
ArthroCare Corp.	1.32
Sigma-Aldrich	1.30
Biomarin Pharmaceutical Inc	1.28
EV3	1.23
GEDEON RICHTER RT	1.21
Mylan Laboratories	1.20
Abraxis BioScience Inc	1.18
Progenics Pharmaceuticals Inc	1.15
Laboratory Corp. of America Hold- ing	1.13
IPSEN	1.13
Pall Corp.	1.12
Biomet, Inc.	1.04
Barr Pharmaceuticals, Inc.	1.01
Beckman Coulter Inc.	1.00
Zymogenetics Inc	0.96
AXCAN PHARMA INC	0.96
Elan Corporation plc (ADR)	0.95
Millipore Corp.	0.93
Lincare Holdings	0.92
Triad Hospitals	0.92
Shire PLC (ADR)	0.90

Mr. James A. Brigagliano

March 7, 2007

Page 10

Cytec Corp.	0.87
Medicis Pharmaceutical	0.78
Bausch & Lomb	0.77
H LUNDBECK A/S	0.74
Keryx Biopharmaceuticals	0.71
Community Health Systems	0.71
Altana AG (ADR)	0.67
Isis Pharmaceuticals	0.66
Brookdale Senior Living Inc.	0.66
Salix Pharmaceuticals Ltd	0.64
Health Management Assoc.	0.58
ANGIOTECH	
PHARMACEUTICALS IN	0.54
Sepracor Inc.	0.46
MedImmune Inc.	0.44
Waters Corporation	0.43
Valeant Pharmaceuticals Int'l	0.38
Watson Pharmaceuticals	0.38
ALIZYME PLC	0.36
Biovail Corp. (US)	0.35
Osi Pharmaceuticals Inc	0.34
King Pharmaceuticals	0.30
Alkermes Inc	0.29
Vertex Pharmaceuticals	0.29
PDL BioPharma, Inc.	0.29
New River Pharmaceuticals	0.26
Applera Corp-Applied Biosystems Group	0.23
Medarex Inc	0.17
Adolor Corporation	0.16
Nektar Therapeutics	0.15
Millennium Pharmaceuticals	0.10

B. The Advisor

XShares Advisors LLC serves as the investment adviser to the Fund (the "Advisor") with overall responsibility for the general management and administration of the Fund, subject to the supervision of the Fund's Board of Directors (the "Board"). Pursuant to an investment advisory agreement between the Company and the Advisor, the Advisor is authorized to engage one or more sub-advisers to perform any of the services contemplated to be performed by the Advisor under the investment advisory agreement. The Advisor is



Mr. James A. Brigagliano

March 7, 2007

Page 11

located at 420 Lexington Avenue, New York, New York 10170. The Advisor's parent company, XShares Group LLC, is the creator of the Underlying Indexes.

C. The Sub-Advisor

BNY Investment Advisors, a separate identifiable division of the Bank of New York, serves as investment sub-adviser to the Fund (the "Sub-Advisor"). Pursuant to a sub-advisory agreement between the Advisor and the Sub-Advisor, the Sub-Advisor will be responsible for the day-to-day management of the Fund, subject to the supervision of the Advisor and the Board.

D. The Distributor

ALPS Distributors, Inc. serves as the distributor of Creation Unit Aggregations for the Fund on an agency basis (the "Distributor"). The Distributor has entered into an agreement with the Company pursuant to which it will distribute HealthShares™ of the Fund. This agreement will continue for two years from its effective date and will be renewable annually thereafter. HealthShares™ will be continuously offered for sale by the Distributor only in Creation Unit Aggregations, as described in the Company's prospectus. The Distributor will deliver the Company's prospectus, and upon request, the statement of additional information ("SAI") to persons purchasing Creation Unit Aggregations and will maintain records of both orders placed with it and confirmations of acceptance furnished by it. The Distributor is a broker-dealer registered under the Exchange Act and a member of the NASD, Inc. The Distributor has no role in determining the investment policies of the Fund or which securities are to be purchased or sold by the Fund.

E. Management - Indexing Approach

The Company's Board has responsibility for the overall management of the Fund. The Advisor, subject to the supervision of the Board, will be responsible for the investment management of the Fund. The Sub-Advisor will be responsible for the day-to-day management of the Fund, subject to the supervision of the Advisor and the Board. As described in the Company's prospectus, the Fund is not actively managed and the actions of the Advisor and Sub-Advisor will not result in the active management of the Fund. Instead, the Advisor uses a passive, or indexing, approach in managing the Fund to track the performance, before fees and expenses, of the Underlying Index. Unlike many mutual funds, the Fund does not seek to outperform any particular market sector and will not assume temporary defensive positions when markets decline or appear overvalued.

Wherever practicable, the Fund will replicate its Underlying Index, meaning that it will hold the same securities as those in the Underlying Index and in approximately the same proportions (the securities owned by the Fund are hereinafter referred to as "Fund Securities"). The Fund may also sample its Underlying Index by holding securities that, in the

