COMMENT LETTER

June 28, 2012

ICI Comment Letter on IOSCO Consultation on ETFs (pdf)

June 27, 2012 Mr. Mohamed Ben Salem General Secretariat International Organization of Securities Commissions (IOSCO) Calle Oquendo 12 28006 Madrid Spain Re: Principles for the Regulation of Exchange Traded Funds Dear Mr. Ben Salem: The Investment Company Institute1 (the "Institute") welcomes the opportunity to comment on the IOSCO Technical Committee's consultation report, Principles for the Regulation of Exchange Traded Funds (the "Report").2 Exchange-traded funds ("ETFs") registered under the U.S. Investment Company Act of 1940 ("ICA") are an important part of both the U.S. fund market and the global ETF market,3 and we therefore appreciate IOSCO's attention to these products. In the Report, IOSCO states that it has developed 15 proposed common investor-protection principles on ETFs to guide regulators and markets.4 The principles are intended to be adaptable to different regulatory frameworks and some principles may be better suited to industry best practice rather than regulation. The Report further states that IOSCO's work with respect to other areas of CIS regulation is also applicable to the operation and management of ETFs. Therefore, the Report explains that it both identifies proposed principles that address unique issues or concerns posed by ETFs, and adapts existing IOSCO principles to the specifics of ETFs and makes general 1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.4 trillion and serve over 90 million shareholders. 2 See IOSCO CRO5/12, Principles for the Regulation of Exchange Traded Funds, Consultation Report, March 2012, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD376.pdf. 3 According to ICI data, as of December 2011, ETFs registered under the ICA held $939 billion in assets under management, or 70% of the global ETF market. 4 The Report states that, unless otherwise noted, the term "ETF" refers only to ETFs organized as collective investment schemes ("CIS") and, for the United States, only ETFs regulated under the ICA. Report at 2 and footnote 7. Mr. Mohamed Ben-Salem June 27, 2012 Page 2 of 11 recommendations when issues are not exclusive to ETFs or to securities markets regulation.5 The Report groups the principles into four categories: (1) principles related to ETF classification and disclosure; (2) principles related to marketing and sale of ETF shares; (3) principles related to the structuring of ETFs; and (4) issues broader than ETFs (which focuses on market integrity). We believe that, by and large, IOSCO has appropriately identified principles that are important for ETF regulation globally, and we support the expression of those principles as set forth in the Report. We appreciate that the descriptions following the principles attempt to illustrate how the principles may be reflected in the context of ETFs. Nevertheless, although the Report generally explains that some of these principles are not unique to ETFs, it appears that in fact most are not specific or inherent to ETFs but rather apply broadly to CIS. These include the principles regarding disclosure (e.g., fees and expenses or a fund's investment strategies regarding how it may replicate the index) and sales practices (e.g., use of fair and balanced sales presentations and materials, reasonable assessment that a product is consistent with customer's knowledge, objectives, risk appetite and capacity for loss). Similarly, the principle recommending regulations to enhance the transparency of information available with respect to the lending and borrowing of securities is the subject of a far wider discussion, not even limited to CIS, as evidenced by the current efforts of policymakers such as the Financial Stability Board ("FSB"), the European Commission, and the U.S. Securities and Exchange Commission ("SEC"). Accordingly, we recommend adding an explanatory preamble to Appendix A, which lists the principles for ETF regulation. Such a preamble would explain that most of the principles are not unique to ETFs, but that the Report seeks to focus on how they apply to ETFs in the narrative accompanying the principles. This context is important for those who review only the principles without the benefit of the full Report. Our more specific comments are provided below. Principles Related to ETF Classification and Disclosure (Principles 1-8) The first eight proposed principles relate to ETF classification and disclosure. The Institute has a longstanding history of supporting initiatives to improve the quality of information investors receive about funds.6 We strongly support efforts to help investors distinguish ETFs from other investment vehicles and from one another, and to understand their investment strategies, risks, and costs, among other things, as well as initiatives that promote the quality of ETF trading. We therefore generally 5 See Report at 3. 6 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, dated Feb. 28, 2008, available at http://www.ici.org/pdf/22294.pdf (supporting the SEC's mutual fund summary prospectus proposal, and summarizing the history of SEC and industry efforts to improve fund disclosure over nearly three decades). support these principles. We recommend, however, revising principle 8 and the related discussion to reflect the current and ongoing examination of securities lending by multiple regulatory bodies. Principle 1 – Disclosure to Help Investors Differentiate ETFs from other Exchange-Traded Products Institute members that sponsor ETFs recognize the critical importance of ensuring that investors can distinguish ETFs from other exchange-traded products. Much of this information is already found in the disclosure documents required by the SEC. In addition, many ETF issuers actively seek to educate investors, through educational material on their websites, outreach to financial advisors, and other efforts. Although we support principle 1, we note that requiring such disclosure from ETFs alone has limitations. The Report states that "[i]mplementation of these principles is directed at disclosure by ETFs and is not meant to extend regulatory obligations to other ETPs…"7 While we recognize the jurisdictional limitations of IOSCO members, we urge IOSCO to strongly encourage and support investor education initiatives to improve investor understanding of the differences between exchange traded products. Principles 2, 3, 4, 5, and 7 – Disclosure to Ensure Differentiation Between ETFs and other CIS, and Among ETFs; Disclosure Regarding an ETF's Strategies , Risks, Method of Tracking its Benchmark, Portfolio Composition, and Fees and Expenses Principles 2, 3, 4, 5, and 7 generally recommend that regulators require disclosures to aid investors in understanding the contours of ETFs they may be considering, including: the fundamental differences between an ETF and another structure; the type of ETF (index-based versus actively managed and physical versus synthetic); the ETF's investment objective and its strategies to accomplish that objective including, for an index-based ETF, how it will seek to track the index;

information about the ETF's holdings and performance tracking; and the costs associated with investing. We generally support these principles. As part of our longstanding commitment to improving the quality of information investors receive about funds, the Institute and its members worked with the SEC to develop a mutual fund summary prospectus, which includes virtually all of this information. For example, an ETF's summary prospectus8 must explain that an ETF is bought or sold on a securities exchange at market-determined prices (principle 2); principal risks, investment objectives, and principal strategies, which would include whether an ETF is actively managed or seeks to track an index and, if the latter, whether it does so by replicating, i.e., holding every security in the index in the same 7 Report at 5, footnote 14. 8 While use of the summary prospectus is optional, all funds must include a "summary section" at the front of their full prospectus that contains the same summary information in essentially the same format, so that investors in funds that elect not to provide a summary document still have the benefit of this useful presentation. Mr. Mohamed Ben-Salem June 27, 2012 Page 4 of 11 proportions, by representative sampling of the index, or by some other means such as through derivative instruments9 (principles 2, 3, and 4); historic performance compared to its benchmark (principle 5); and fees and expenses (principle 7). A more detailed discussion of many of these elements is found in the fund's full prospectus and statement of additional information. In addition, in conjunction with the exemptive relief necessary for an ETF to operate in the United States, all ETFs make available to the public information about their portfolio holdings, including derivative contracts, on a daily basis (principle 5). Principle 6 – Disclosure of Information Necessary to Facilitate Arbitrage Activity in the ETF As a condition of their exemptive relief from the ICA, ETFs must represent that investors should be able to sell shares in the secondary market at the end of the day at prices that do not vary substantially from the ETF's NAV.10 ETFs rely on a well-functioning arbitrage mechanism to make this representation. We therefore support principle 6, which focuses on the facilitation of arbitrage activity in ETF shares. To date, ETFs registered under the ICA have been required to provide information about their portfolio holdings on a daily basis to support arbitrage. We understand, however, that a number of alternative mechanisms designed to facilitate arbitrage without such a high level of transparency have been proposed and are under consideration by the SEC staff. We believe principle 6 adequately accounts for the possibility that an alternative to portfolio transparency may sufficiently facilitate arbitrage. It should be noted that, while a mechanism that allows market participants to assess the value of the ETF relative to its underlying holdings (e.g., transparency) is necessary for efficient arbitrage, it is not sufficient; several other elements of an ETF's design may also impact arbitrage.11 9 We caution IOSCO not to conflate all ETFs that use derivative instruments to pursue their investment objectives with affiliated single-swap ETFs that are commonly described as "synthetic." See infra note 24 and accompanying text. 10 To be regulated as an open-end company under the ICA, a fund must issue "redeemable securities," which are defined, in part, as securities for which the holder is entitled to receive, upon presenting the share to the issuer, "approximately his proportionate share of the issuer's current net assets, or the cash equivalent." 15 U.S.C. § 80a-2(a)(32). 11 For example, the efficiency of the arbitrage mechanism is also affected by the size of creation units. Very small creation units would, in theory, allow retail investors to transact directly with the ETF, while very large creation units could reduce the willingness or ability of Authorized Participants to transact with the ETF, impeding the arbitrage pricing discipline. See generally Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Nancy M. Morris, Secretary, U.S. Securities and Exchange Commission, dated May 19, 2008, available at http://www.ici.org/pdf/22543.pdf (supporting the SEC's ETF rule proposal). Mr. Mohamed Ben-Salem June 27, 2012 Page 5 of 11 Principle 8 – Disclosure Regarding Securities Lending Shortly after IOSCO issued its report, the FSB's Workstream on Securities Lending and Repos issued an interim report exploring current market practices and existing regulatory frameworks.12 The interim report will form the basis for the next stage of the Workstream's work of developing appropriate policy measures with respect to these topics. Additionally, Section 984 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the SEC to adopt rules designed to increase the transparency of information available to brokers, dealers, and investors with respect to securities lending. The SEC has not yet issued a rule proposal.13 These inquiries should inform IOSCO's principle with respect to securities lending. We therefore recommend that the narrative accompanying principle 8 be revised to acknowledge the ongoing inquiries. Further, we recommend that the principle itself be revised to state that "Regulators should consider [rather than encourage] disclosure requirements…" to more accurately reflect the current state of inquiry on this topic. Principles Related to Marketing and Sale of ETF Shares (Principles 9-12) Principles 9 through 12 focus on the role of intermediaries in marketing and selling ETFs to investors. We applaud IOSCO's attention to the role of intermediaries. Institute research shows that the majority of fund investors in the United States seek advice from a financial intermediary.14 It is critical that such investors receive a fair and balanced picture of the recommended products from their financial advisor (principle 9), and that their advisors carefully consider the suitability of the recommended products for each individual investor (principle 11). 15 We agree that intermediaries 12 Securities Lending and Repos: Market Overview and Financial Stability Issues, Interim Report of the FSB Workstream on Securities Lending and Repos (April 27, 2012), available at http://www.financialstabilityboard.org/publications/r_120427.pdf. See also Letter from Robert C. Grohowski, Senior Counsel, Investment Company Institute to Secretariat of the Financial Stability Board (May 25, 2012), available at http://www.ici.org/pdf/26196.pdf. 13 See also European Commission, Green Paper Shadow Banking, COM(2012) 102 Final (March 19, 2102), available at http://ec.europa.eu/internal_market/bank/docs/shadow/green-paper_en.pdf. 14 In the United States, eighty percent of mutual fund investors outside employer-sponsored retirement purchased mutual funds with the help of an investment advisor. See 2012 ICI Factbook, available at www.icifactbook.org, at 92. We would expect that retail ETF investors would similarly seek professional advice. 15 As we have previously noted, we strongly believe that suitability determinations should be made by financial intermediaries based on individual analyses. We do not believe it is appropriate for a regulator to declare that certain products are per se unsuitable for certain types of investors. See Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Marcia K. Asquith, Office of the Secretary, Financial Industry Regulatory Authority, dated June 29, 2009, available at http://www.ici.org/pdf/23595.pdf (requesting that FINRA confirm that suitability determinations should be made by its members (broker-dealers), and stating that FINRA should not suggest that certain products are per se unsuitable). See also FINRA Podcast on Non-Traditional Exchange-Traded Funds, July 13, 2009, Mr. Mohamed Ben-Salem June 27, 2012 Page 6 of 11 must understand the investment products they sell and have a robust process to assess the profile of a customer in order to make appropriate recommendations. A compliance function and internal policies and procedures to support this process (principle 12) are also critical. Finally, we strongly support IOSCO's recommendation (principle 10) that, in evaluating an intermediary's disclosure obligations, regulators should consider who has control over the information to be disclosed. As we have noted to the SEC,16 to improve the quality of disclosure in these areas, it is critical to recognize that intermediary disclosure and product disclosure are necessarily distinct, and to place the disclosure obligation on the appropriate party. A failure to do so may result in practical problems and less effective disclosure. Principles Related to the Structuring of ETFs (Principles 13-14) Principles 13 and 14 address real or perceived risks within certain

ETF structures that could harm all ETFs by association: conflicts of interest and counterparty exposure. We support the need to draw attention to these potential risks, and we believe they can readily be addressed through regulatory action. Principle 13 – Conflicts of Interest The Report notes that due to the nature and structure of CIS, conflicts may arise between the CIS operator and the CIS shareholder. The Report states that, as CIS, ETFs share many of the same general CIS conflicts but also may be subject to specific conflicts due to their structure. For example, the Report states potential conflicts of interest may exist where there are affiliations between the ETF and its index provider, authorized participants, securities lending agent, or swap counterparties, among others. We support IOSCO's recommendation that regulators assess whether their rules and regulations appropriately address potential conflicts of interest raised by ETFs. The ICA generally prohibits transactions between funds regulated under the ICA and their affiliates. Therefore, in the United States, these types of relationships are generally prohibited or otherwise circumscribed. For example, as noted in the Report, ETFs that track indices created by affiliates of the ETF's adviser have received exemptive relief from the ICA, under which they have agreed to a series of terms that are designed to prevent the communication of material non-public available at http://www.finra.org/Industry/Education/OnlineLearning/Podcasts/Products/P123062 (stating that FINRA does not believe that any investment is per se unsuitable). 16 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth K. Murphy, Secretary, U.S. Securities and Exchange Commission, dated March 23, 2012, available at www.ici.org/pdf/25998.pdf (responding to an SEC request for comment on issues pertaining to financial literacy among investors, in connection with a study the SEC is required to conduct under Section 917 of the Dodd-Frank Act). Mr. Mohamed Ben-Salem June 27, 2012 Page 7 of 11 information between the ETF and the affiliated index provider.17 Similarly, ETFs that use affiliated securities lending agents must either obtain exemptive relief or comply with a series of requirements set forth in SEC staff guidance designed to address potential conflicts and ensure that the securities lending program is in the best interests of the shareholders.18 The ICA prohibitions also extend to affiliations between an authorized participant ("AP") and an ETF provider. ETFs typically obtain limited exemptive relief from this prohibition, only with respect to APs that may be deemed affiliates under the federal securities laws solely by virtue of owning 5 percent or more of the ETF. Absent this relief, the ICA's prohibition would prevent a new ETF from coming to market if it did not have a large number of APs. The SEC determined that such relief is appropriate because these affiliates are not treated differently from non-affiliates when engaging in purchases and redemptions of ETF shares, and there is no opportunity for them to engage in transactions that could be detrimental to other shareholders.19 Finally, the ICA prohibits transactions between a fund and an affiliate acting for its own account, such as the buying or selling of securities (other than those issued by the fund) or other property, or the lending of money or property by a fund to an affiliate. Thus, in the United States, ETFs are prohibited from entering into a swap contract with an affiliate (e.g., a trading desk of a company that owns or is under common control with the fund's adviser) as a counterparty,20 or lending securities to an affiliate.21 17 See Exchange-Traded Funds, Proposed Rule, SEC Release Nos. 33-8901 and IC-28193 (Mar. 11, 2008), available at http://www.sec.gov/rules/proposed/2008/33-8901.pdf at fn 106 ("ETF Proposal") (listing these terms, which include publication of the rules that govern inclusion and weighting of the securities in the index, and firewalls between the staff responsible for the index and those responsible for portfolio management, among others). The federal securities laws and the rules of national securities exchanges also require funds and their advisers to adopt measures reasonably designed to prevent the misuse of non-public information. Indeed, in its ETF Proposal, the SEC stated that these requirements would be sufficient to protect against the potential abuses addressed by these terms, and proposed not to include those terms in the rule. See ETF Proposal at 33. 18 These conditions require that, among other things, 1) the affiliated lending agent's services must be of the type routinely provided to funds by unaffiliated lending agents as part of securities lending programs; 2) the investment adviser, subject to fund board supervision, must negotiate the terms of the loans, pre-approve borrowers, and select investments for cash collateral; and 3) the fund board must review and approve the arrangement and receive and review, at least quarterly, the fees paid to the lending agent. In addition, the fees paid must be based on the services offered, and may not be based on the revenues or profits derived from the lending program. See, e.g., SEC No-Action Letter, Norwest Bank Minnesota, N.A., (publ. avail. May 25, 1995). 19 See ETF Proposal, supra note 17, at 41-43. As we explained in our comment letter to the SEC supporting the ETF Proposal, we believe that this rationale applies equally to APs that may be affiliated for other reasons, such as broker-dealers that are affiliated with an ETF's adviser. See, e.g., Letter from Karrie McMillan, supra note 11. 20 This prohibition explains why a "synthetic" model in which an ETF engages in a single swap with its affiliate as a counterparty could not exist in the United States. See Letter from Karrie McMillan, General Counsel, Investment Mr. Mohamed Ben-Salem June 27, 2012 Page 8 of 11 Principle 14 – Counterparty Exposure and Collateral Management As the Report indicates, counterparty exposure and collateral management are not exclusive to ETFs. Nonetheless, because some ETF strategies, including outside of the United States,22 utilize derivatives, considering these risks in the context of ETFs is important. Counterparty exposure and collateral management issues may also be implicated by ETFs that lend securities. We offer the following comments. As a preliminary matter, with respect to use of derivatives, the Report recognizes that the structure and regulation of ETFs is substantially different in the United States than in Europe and elsewhere. As the Report notes, "the types of synthetic [ETFs] encountered in Europe or Asia do not exist as a CIS in the United States"23 The Report explains the two types of European swap-based ETFs (funded and unfunded), but does not clearly distinguish the US model; indeed, at times it appears to conflate US ETFs that utilize derivatives with the affiliated single swap-based structure.24 We urge IOSCO and other regulatory bodies examining ETFs to clearly draw these distinctions – indeed, we would support an agreed upon definition of "synthetic" ETF to ensure that structures are distinguished. As we discussed in detail in a comment letter to the FSB on ETFs, we believe the ETF structure under the ICA offers a number of strong protections to address conflicts, counterparty risk and collateral management with respect to derivatives transactions.25 In addition, as a practical matter, by contract with their counterparties, funds often accept only cash and U.S. treasury and agency securities as collateral. When other securities are permitted, they are subject to an agreed-upon haircut that can range from four to five percent for high-quality agency securities to forty or fifty percent for equities.26 Company Institute, to the Secretariat of the Financial Stability Board, dated May 16, 2011, available at http://www.ici.org/pdf/25189.pdf. 21 See id. 22 In March 2010, the SEC announced the deferral of new applications for ETFs that make significant use of derivatives, so only those ETFs that received relief prior to that date may use derivatives. See SEC Press Release: SEC Staff Evaluating the Use of Derivatives by Funds, March 25, 2010, available at http://www.sec.gov/news/press/2010/2010-45.htm. 23 Report at footnote 44. 24 We note, for example, that in footnote 9, the Report intimates that it considers leveraged or inverse ETFs involving swaps, futures and other derivative instruments to be "synthetic," but later discussions (for example on page 7 and 18-20) speak of synthetic ETFs as encompassing only the European affiliated single-swap model. 25 See Letter to the Financial Stability Board, supra note 20. 26 A recent CFTC proposal would not permit equities to be used as collateral except by commercial end users. See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 FR 23732 (April 28, 2011) at 23736. Mr. Mohamed Ben-Salem June 27, 2012 Page 9 of 11 Our comment letter to FSB also details U.S. practices with respect to collateral and counterparty risk in securities lending. SEC guidelines set forth the types of collateral that funds may accept. These include cash, U.S. government and agency securities, and, subject to limitations, certain bank guarantees and irrevocable bank letters of credit, although funds typically prefer to receive cash collateral. SEC guidelines further require that funds lending securities receive at least 100 percent of the value of the loaned securities as collateral from a borrower, marked to market daily. As a practical matter, securities lending agreements typically establish a somewhat higher collateral amount, usually 102 percent for loaned domestic securities and 105 percent for loaned foreign securities. Finally, SEC guidelines require that the fund's board approve specific borrowers to whom the fund may lend shares. Issues Broader than ETFs (Principle 15) Chapter 5 of the Report considers the potential broader risks to financial stability beyond the specificities of the ETF industry. Specifically, the Report states that ETF markets can benefit significantly from the application of recommendations developed by the Technical Committee in the Market Integrity and Efficiency Report,27 which examined the practical impact of technological developments and the regulatory issues these technological developments raise. The Institute provided comments on the Market Integrity and Efficiency Report and strongly supported efforts to establish a consistent approach among global regulators to address the risks associated with technological developments in the markets.28 Risks Arising on Secondary Markets We support principle 15 of the Report that recommends that ETF exchanges consider adopting rules to mitigate the occurrence of liquidity shocks and transmission across correlated markets. In particular, we agree with Recommendation 2 of the Market Integrity and Efficiency Report that regulators should seek to ensure that trading venues have in place suitable trading control mechanisms (e.g., trading halts, volatility interruptions, limit-up-limit-down controls) to address volatile market conditions. The Institute has supported efforts in the United States to require the establishment of trading control mechanisms and pre- and post-trade risk controls. Specifically, the market events of May 6, 2010 in the United States highlighted the need to examine several areas surrounding trading control mechanisms. These included the need for: (1) updated market-wide and stock-by-stock circuit 27 See FR09/11 Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency, Final Report, Report of the Technical Committee of IOSCO, October 20, 2011, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf. 28 Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Werner Bijkerk, Senior Policy Advisor, IOSCO, dated August 12, 2011; available at http://www.ici.org/pdf/25408.pdf Mr. Mohamed Ben-Salem June 27, 2012 Page 10 of 11 breakers; (2) better procedures for resolving clearly erroneous trades; (3) an examination of the inconsistent practices of exchanges regarding addressing major price movements in stocks; and (4) better coordination across all types of markets. Significantly, the Institute strongly supported efforts by regulators to establish a limit up-limit down mechanism, which was recently adopted in the United States, to address extreme price movements in stocks. We believe similar trading control mechanisms can be useful in other jurisdictions where ETFs are traded. In addition to the specific issues regarding trading control mechanisms that need to be examined, the Institute supports a more robust discussion and examination of the linkages and interdependency of the different types of financial markets. For example, the "flash crash" in the United States illustrated how the connection between price discovery for the broader stock market and activity in the futures markets can affect market events. It will be critical for the development of effective regulation in ETF markets that regulators strive to develop new regulations that facilitate harmonization and coordination across all types of trading venues.29 Finally, the Institute believes the establishment of robust pre- and post-trade risk

controls is critical given the technological advancements in trading. Much of the focus in the United States around pre- and post-trade risk controls has been on the establishment of requirements relating to so- called "sponsored access" and other types of market access arrangements. The Institute strongly supported the adoption by the SEC of rules to require broker-dealers to implement risk management controls and supervisory procedures reasonably designed to manage the risks associated with market access.30 Similarly, we supported efforts by IOSCO in its consultation report on direct electronic access to provide a framework for crafting regulations to oversee these arrangements.31 29 In addition to efforts specific to the flash crash, in the United States, the SEC has taken several steps to strengthen the minimum quoting standards for market makers and has effectively prohibited stub quotes in the U.S. equity markets. The Institute supported these efforts because, as the Report notes, executions against stub quotes represented a significant proportion of the trades that were executed at extreme prices and subsequently broken on May 6, 2010. The Institute supports other jurisdictions examining similar requirements as well as whether other potential obligations are necessary for market makers. 30 See Letter from Ari Burstein, Senior Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 29, 2010; available at http://www.ici.org/pdf/24210.pdf. 31 See Letter from Ari Burstein, Senior Counsel, Investment Company Institute, to Greg Tanzer, Secretary General, IOSCO, dated May 20, 2009; available at http://www.ici.org/pdf/23474.pdf. Mr. Mohamed Ben-Salem June 27, 2012 Page 11 of 11 ETFs and Market Integrity (Risk of Abusive Behavior) We agree with the Report that regulators should consider implementing Recommendation 5 of the Market Integrity and Efficiency Report in ETF markets, whereby regulators would monitor for novel forms, or variations of, market abuse resulting from technological developments and take action as necessary. Most significantly, we believe that regulators should have access to accurate, timely and detailed information about market participants and trades that are executed. We also agree that regulators should review their arrangements (including cross-border information-sharing arrangements) and upgrade their monitoring of order and trading flow. To this end, we believe that a robust transaction reporting regime is necessary to enable regulators to monitor the activities of firms and ensure compliance with regulations and to monitor for market abuses. In the United States, the Institute has supported efforts to create a reporting regime for regulators with respect to the SEC's proposal to develop, implement, and maintain a consolidated audit trail ("CAT").32 The Institute strongly supports an examination by other regulators of similar transaction reporting regimes. The Institute also strongly supports an examination by regulators of necessary changes to existing rules and regulations to better address issues relating to market abuse and disorderly trading, and urges regulators to address issues relating to abusive or disruptive trading on an expedited basis. . Because of the varied trading practices used by market participants, it often is difficult to distinguish between legitimate and disruptive trading practices in a number of situations. Therefore, as regulators examine new laws or rules that may be necessary to address market abuse and disorderly trading, we stress the need for clarity as to the nature of any conduct that will be prohibited * * * * * We appreciate the opportunity to provide comments on the Report. If you have any questions about our comments or would like additional information, please contact me (kmcmillan@ici.org or 202-326-5815) or Susan Olson, Senior Counsel – International Affairs (solson@ici.org or 202-326- 5813). Sincerely, /s/ Karrie McMillan Karrie McMillan General Counsel 32 See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 9, 2010; available at http://www.ici.org/pdf/24477.pdf.