

Commissioner Michael V. Dunn
Signing Statement

**CFTC Recommendations in Connection with iShares® Silver Trust Shares and iShares®
COMEX Gold Trust Shares**

According to the CFTC/SEC Memorandum of Understanding (MOU), each of our agencies “recognize that enhanced coordination and cooperation concerning issues of common regulatory interest is necessary in order to foster market innovation and fair competition and to promote efficiency in regulatory oversight.” The CFTC/SEC MOU further states that “the agencies can facilitate the introduction of novel derivative products to market users and investors.” While the CFTC and SEC may be adhering to the words of their MOU, I am not certain that we are following the spirit of this document. I fear that it is no easier today for novel products to get to market than it was pre-MOU. I also fear that if this lack of cooperation and coordination continues, given today’s financial environment, both agencies will be doing a disservice to the markets we regulate and the investors we seek to protect. I believe that in order to foster true cooperation between the CFTC and SEC, we must hold joint public meetings so that each agencies’ Chairmen and Commissioners set a tone of cooperation for their staffs, and can be held accountable to those they serve if their coordination and cooperation does not foster the market innovation or efficiency the public demands.

Pending before the Commission are requests by the Options Clearing Corporation (“OCC”) for approval of OCC rules allowing them to clear iShares® Silver Trust Shares and iShares® Comex Gold Trust Shares, and an order pursuant to Section 4(c) of the Commodity Exchange Act (CEA) exempting the trading and clearing of the iShares Option and Futures Contracts as options on securities and security futures.

The propriety of treating the iShares Option and Futures Contracts as options on securities and security futures depends on the status of the underlying iShares contracts as securities. While I have questions about the status of the underlying iShares contracts as securities, *see SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), I believe innovative products, in a regulated environment, should be brought to market in a timely fashion. If, *absent* the 4(c) exemptive order, the OCC rules are permitted to be deemed approved, an inference might be drawn concerning the status of the iShares Option and Futures Contracts as securities. Accordingly, I am voting to approve the 4(c) exemptive order and, based on the Commission’s approval of that order, to approve the OCC rules. While I vote to approve the exemptive order and OCC rules, it is my hope that in the future, greater cooperation between our agencies will facilitate the introduction of similar innovative products regardless of who develops them.

Dissenting in part and concurring in part to Exemptive Order exempting the trading and clearing of certain products related to iShares COMEX Gold Trust Shares and iShares Silver Trust Shares and approval of Request for approval of rules

As I have noted previously in a similar context, I applaud efforts to enhance cooperation and coordination in approving innovative and novel products, and it is my hope and expectation that such efforts will improve in the near future. I dissent, however, from the Commission's issuance of the above-referenced order, because—as I have stated before—I believe the Commission's issuance of such an order should be predicated upon assurance that the SEC will similarly exercise its broad statutory exemptive authorities under the securities laws to permit futures exchanges to trade products that are economically equivalent to those that are or may be approved for trading on national securities exchanges, and to allow derivatives clearing organizations to clear such products. My objective here is not to impair or impede the trading of such cross-jurisdictional products; rather, my concern is solely to ensure that futures markets are not in any way competitively disadvantaged. I dissent once again, as I have in the past, because I do not believe that we have up to this point reached the level of coordination and cooperation between our agencies that provides the assurance of such reciprocity. I look forward to working with colleagues at the SEC on such collaborative efforts promptly to achieve these goals. Given the issuance of the order, however, I concur in the approval of the request for approval of rules.



Bart Chilton, Commissioner
Commodity Futures Trading Commission