

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 4691 / April 25, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17942

In the Matter of

**BLACKROCK FUND
ADVISORS,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), against BlackRock Fund Advisors (“BlackRock FA” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant To Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. From December 2010 through January 2015, BlackRock Fund Advisors ("BlackRock FA"), a registered investment adviser, caused iShares MSCI Russia Capped ETF, Inc. ("Russia Fund Company"), a registered investment company it advised, to operate in violation of Sections 22(d) and (e) of the Investment Company Act, and Rule 22c-1 thereunder. Exchange-traded funds ("ETFs") offer investors a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. ETF shares are traded on a national stock exchange and at market prices that may or may not be the same as the net asset value ("NAV") of the shares. As described below, ETFs obtain exemptions from various provisions of the Investment Company Act before they can operate. In 2010, the iShares MSCI Russia Capped ETF ("Russia Fund ETF") began selling its shares as the only series of shares of the Russia Fund Company. The Russia Fund ETF did not have the required exemptive relief until January 2015. Accordingly, by operating the Russia Fund ETF from December 2010 to January 2015, BlackRock FA caused the Russia Fund Company to violate the Investment Company Act.

Respondent

2. **BlackRock Fund Advisors** is a California corporation organized in 1984. San Francisco-based BlackRock FA is an investment adviser registered with the Commission since 1984. BlackRock FA advises registered investment companies, including ETFs. Among others, BlackRock FA advises the series of iShares Inc. and iShares Trust. Until the Russia Fund ETF was merged into a newly created series of iShares Inc. in 2015, BlackRock FA was its adviser. According to its Form ADV filed in March 2016, BlackRock FA has assets under management of approximately \$427 billion. BlackRock FA is a subsidiary of BlackRock, Inc. (NYSE: BLK), with assets under management of approximately \$4.6 trillion as of December 31, 2015.

Other Relevant Entities

3. **iShares MSCI Russia Capped ETF, Inc.** was a Maryland corporation organized in 2010. The Russia Fund ETF Company was a registered investment company registered with the Commission from 2010 until 2015. BlackRock FA advised the Russia Fund ETF. In January 2015, the Russia Fund ETF merged into a newly created series of iShares Inc. During its existence, the Russia Fund Company's only series was the Russia Fund ETF, which traded on the

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

NYSE Arca exchange.

4. **iShares Inc.** is a Maryland corporation organized in 1994. iShares Inc. is an open-end management investment company registered with the Commission since 1996 pursuant to the Investment Company Act. iShares Inc. consists of numerous ETFs, each of which is organized as a series of iShares Inc., and operates pursuant to certain exemptive relief granted by the Commission. BlackRock FA advises the ETFs that are series of iShares Inc.

5. **iShares Trust** is a Delaware statutory trust organized in 1999. iShares Trust is an open-end management investment company registered with the Commission since 2000 pursuant to the Investment Company Act. iShares Trust consists of numerous ETFs, each of which is organized as a series of iShares Trust, and operates pursuant to certain exemptive relief granted by the Commission. BlackRock FA advises iShares Trust.

Facts

A. Exchange-Traded Funds

6. Exchange-traded funds, unlike traditional open-end investment companies such as mutual funds, do not directly sell fund shares to individual investors or redeem shares from them. Instead, they sell ETF shares to, and redeem ETF shares from authorized participants, and the shares are subsequently traded on exchanges at market prices, not at the ETF's NAV or offering price.

7. These ETF features are inconsistent with some of the Investment Company Act's provisions for open-end investment companies, and therefore require relief from the Commission. Section 22(d) of the Investment Company Act, among other things, prohibits a dealer from selling a redeemable security that is being offered currently to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on the security's NAV. Because secondary market trading in ETF shares takes place at current market prices, and not at the current offering price described in the prospectus or based on the security's NAV, ETFs have obtained exemptions from Section 22(d) of the Investment Company Act and Rule 22c-1. Section 22(e) of the Investment Company Act also prohibits a registered open-end fund from suspending the right of redemption, or postponing the date of payment or satisfaction upon redemption for more than seven days after the tender of such security for redemption. ETFs that invest in foreign securities and effect redemptions in kind are sometimes unable to meet this requirement because the ETFs track foreign indexes with local market delivery cycles that require a delivery process in excess of seven days. ETFs and dealers that do not comply with these requirements when selling ETF shares are violating these provisions of the Investment Company Act absent Commission exemptive relief.

B. The Russia Fund ETF

8. In 2009, BlackRock FA began designing the Russia Fund ETF, which would invest

only in Russian securities. During BlackRock FA's preparations to launch the ETF, BlackRock FA decided to use a stand-alone registered investment company, the Russia Fund Company, for the Russia Fund ETF. On November 2, 2010, the Russia Fund Company's Registration Statement became effective.

9. BlackRock FA believed the Russia Fund ETF was already covered by previously issued exemptive relief. In January 2007, the Commission (through delegated authority) had granted exemptive relief to iShares Inc. and iShares Trust allowing them "to offer additional series, based on securities indices (the 'Future Funds'), without the need for additional exemptive relief from the Commission" ("iShares Future Funds Relief"). Because the iShares Future Funds Relief only covered iShares Inc. and iShares Trust and their series, the newly created – and separately organized – Russia Fund Company and Russia Fund ETF were not covered by the iShares Future Fund Relief.

10. On November 9, 2010, BlackRock FA launched the Russia Fund ETF without seeking further exemptive relief. From the time it launched the Russia Fund ETF, BlackRock FA managed the Russia Fund ETF as if it had received exemptions from the requirements of Sections 22(d) and (e) of the Investment Company Act and Rule 22c-1 thereunder and in compliance with the operative provisions of the iShares Future Funds Relief.

C. BlackRock FA Realizes the Possibility That the iShares Future Funds Relief Did Not Apply to the Russia Fund ETF.

11. In early January 2011, BlackRock FA realized that the iShares Future Funds Relief potentially did not extend to the Russia Fund Company, and thus the Russia Fund ETF. BlackRock FA understood that this created the potential that BlackRock FA was operating the Russia Fund Company and the Russia Fund ETF in violation of Sections 22(d) of the Investment Company Act and Rule 22c-1 thereunder because shares of the Russia Fund ETF, like those of other ETFs, were sold on a national securities exchange at a negotiated market price, not the current offering price or a price based on the current NAV. Additionally, in violation of Section 22(e), the Russia Fund Company was sometimes taking greater than seven days to effect redemption in kind.

12. On February 24, 2011, BlackRock FA received a comment letter from the Commission staff regarding a draft registration statement for another planned standalone registrant that would partly invest in Russian securities.

13. In early July 2011, BlackRock FA's counsel, at the direction of BlackRock FA, informed Commission staff that the Russia Fund ETF was functioning pursuant to the iShares Future Funds Relief, and that it believed the iShares Future Fund Relief encompassed standalone registrants with the same adviser, including the Russia Fund ETF, and the other planned standalone registrant. The staff said that they would review the situation and get back to BlackRock FA.

14. A few days later, the staff contacted BlackRock FA's counsel, who recalled that the staff stated that they could interpret the iShares Futures Fund Relief as only applying to any series

of iShares Inc. or iShares Trust and not to any standalone registrants. The staff advised that the planned additional fund, which was not a series of iShares, Inc. or iShares Trust, should not be launched. The staff did not provide BlackRock FA with further guidance regarding the previously launched Russia Fund ETF.

D. BlackRock FA Continues to Operate the Russia Fund ETF.

15. Outside counsel informed Blackrock FA of the conversations with the staff regarding the scope of the iShares Future Fund Relief and outside counsel's belief that it was appropriate to continue to operate the Russia Fund ETF as a series of the Russia Fund Company. After those discussions, and after privileged communications with BlackRock FA's legal department, BlackRock FA decided to continue to operate the Russia Fund ETF as a series of the Russia Fund Company.

16. On March 7, 2014, after conducting an exam of BlackRock FA, the Office of Compliance Inspections and Examinations staff informed BlackRock FA that it believed iShares Future Funds Relief did not apply because it only covered iShares Inc. and iShares Trust and their series, and thus the newly created – and separately organized – Russia Fund Company and Russia Fund ETF were not covered by the iShares Future Fund Relief.

17. On January 25, 2015, after internal discussions and discussions with the staff, the Russia Fund Company merged into a newly created series of iShares Inc., which assumed all the assets and liabilities of the Russia Fund Company. At that time, the Russia Fund ETF became a series of iShares Inc. and thus able to rely on the iShares Future Funds Relief.

Violations

18. As a result of the conduct described above, BlackRock FA caused violations of Rule 22c-1 under the Investment Company Act, which prohibits any registered investment company issuing redeemable securities, person designated in the company's prospectus as authorized to consummate transactions in the company's securities, principal underwriter, and dealer from selling, redeeming, or repurchasing such redeemable security except at a price based on the current NAV of such security. Without exemptive relief, BlackRock FA caused shares of the Russia Fund ETF to be purchased and sold at prices other than the NAV in the secondary market.

19. As a result of the conduct described above, BlackRock FA caused violations of Section 22(d) of the Investment Company Act, which prohibits a registered investment company, principal underwriter, and dealer from selling redeemable securities issued by the company except at a current offering price described in the company's prospectus. Without exemptive relief, BlackRock FA caused shares of the Russia Fund ETF to be sold in the secondary market at negotiated prices, rather than a current public offering price described in the prospectus.

20. As a result of the conduct described above, BlackRock FA caused the Russia Fund Company to violate Section 22(e) of the Investment Company Act, which prohibits a registered

investment company from suspending the right of redemption, or postponing the date of payment or satisfaction upon redemption, for more than seven days. Without exemptive relief, BlackRock FA caused the Russia Fund ETF to violate Section 22(e) of the Investment Company Act when it postponed the date of payment or satisfaction for more than seven days after its shares were tendered for redemption.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BlackRock FA's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 9(f) of the Investment Company Act, Respondent BlackRock FA cease and desist from committing or causing any violations and any future violations of Sections 22(d), and (e) of the Investment Company Act and Rule 22c-1 thereunder.

B. Respondent shall, within thirty (30) calendar days of the entry of this Order, pay a civil monetary penalty in the amount of \$1,500,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BlackRock Fund Advisors as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Dabney

O’Riordan, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

By the Commission.

Brent J. Fields
Secretary