

for the following Amex-listed Exchange Traded Funds: Standard & Poor's Depository Receipts (Symbol: SPY); Nasdaq 100 Index Tracking Stock (QQQ); DIAMONDS (DIA); and iShares S&P 500 Index Fund (IVV).

Off-Floor orders (*i.e.*, customer and broker-dealer) in these securities currently are charged \$.006 per share (\$.60 per 100 shares), capped at \$100 per trade (16,667 shares). Orders entered electronically into the Amex Order File from off the Floor ("System Orders") for up to 5,009 shares are currently not assessed a transaction charge, while System Orders over 5,099 shares are subject to a \$.006 per share transaction charge, capped at \$100 per trade. Exchange transaction charges applicable to customer orders are now suspended. The Exchange will continue to impose, and is not suspending, existing transaction charges applicable to entities other than customers, including Exchange specialists, Registered Traders, and member organizations.

The Exchange believes a suspension of fees for these securities for customer orders is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the Act.³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁴ in general, and furthers the objectives of section 6(b)(4)⁵ in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder⁷ because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-57 and should be submitted by September 11, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44700; File No. SR-Amex-2001-34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 by the American Stock Exchange LLC, Relating to Funds of the iShares Trust Based on Foreign Stock Indexes

August 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 25, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On June 25, 2001, the Amex filed Amendment No. 1 to the proposal.³ On July 18, 2001, the Amex filed Amendment No. 2 to the proposal.⁴ On July 26, 2001, the Amex filed Amendment No. 3 to the proposal.⁵ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Department, Amex, to Yvonne Fraticelli, Division of Market Regulation ("Division"), Commission, dated June 20, 2001 ("Amendment No. 1"). Amendment No. 1 deleted the S&P Global 700 Index Fund from the new series of the iShares Trust that the Amex proposes to list and trade.

⁴ See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Yvonne Fraticelli, Division, Commission, dated July 17, 2001 ("Amendment No. 2"). Amendment No. 2 provided additional information concerning the proposal, including (1) the minimum price variation for the proposed new series of iShares; (2) a description of the "representative sample" strategy that the Funds will use; (3) a description of the requirements for a Fund to qualify for tax treatment as a regulated investment company; (4) a description of indicative portfolio value for each Fund that the Amex will disseminate during regular Amex trading hours; (5) a clarification regarding the Balancing Amount used in the purchase of Creation Unit Aggregations; and (6) a representation that Morgan Stanley Capital International's ("MSCI") has implemented procedures to prevent the misuse of material non-public information with regard to changes in the MSCI Europe, Australia, Far East ("EAFE") Index.

⁵ See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Yvonne Fraticelli, Division, Commission, dated July 25, 2001 ("Amendment No. 3"). In Amendment No. 3, the Amex revised its proposal to, among other things: (1) Amend Amex Rule 1000A, Commentary .04 to indicate that transactions in iShares Index Funds of the iShares Trust may be effected until 4 p.m. or 4:15 p.m. (New York time) each business day, as specified by the Amex; (2) indicate that the Funds do not intend to concentrate in any particular industry, except

Continued

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

August 9, 2001, the Amex filed Amendment No. 4 to the proposal.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1, 2, 3, and 4 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* the following fifteen series⁷ of the iShares[®] Trust (each such series, an "Index Fund" or "Fund"):⁸ (1) the iShares S&P Global Consumer Discretionary Index Fund; (2) the iShares S&P Global Consumer Staples Index Fund; (3) the iShares S&P Global Energy Index Fund; (4) the iShares S&P Global Finances Index Fund; (5) the iShares S&P Global Health Care Index Fund; (6) the iShares S&P Global Industries Index Fund; (7) the iShares Global Information Technology Index Fund; (8) the iShares

that each Fund will attempt to concentrate its investments to approximately the same extent that its Underlying Index concentrates in the stocks of a particular industry or group of industries; (3) indicate that the web site for the Funds will disclose the tracking error for each Fund and that the Advisor will notify the Fund's Board of Trustees if the tracking error for a Fund exceeds 5%; (4) indicate that the National Securities Clearing Corporation ("NSCC") will make the Balancing Amount per Creation Unit Aggregation available to its members electronically on a daily basis; and (5) indicate that an "Authorized Participant" is either a broker-dealer or other participant in the continuous net settlement system of the NSCC or a participant in the Depository Trust Company ("DTC").

⁶ See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Yvonne Fraticelli, Division, Commission, dated August 8, 2001 ("Amendment No. 4"). In Amendment No. 4, the Amex indicated that: (1) Barclays Global Fund Advisors will provide the NSCC on a daily basis with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation and the Balancing Amount, which the NSCC will make available to NSCC members through an electronic file that NSCC members can download; (2) the final dividend amount for each Fund is the amount of dividends to be paid by a Fund for the appropriate period (usually annually); and (3) the Funds will disseminate the final dividend amount to Bloomberg and other sources.

⁷ The Amex amended its proposal to delete the iShares S&P Global 700 Index Fund as one of the series of the iShares Trust that the Amex proposes to list and trade. See Amendment No. 1, *supra* note 3.

⁸ The iShares Trust ("Trust") has filed with the Commission an Application for Orders ("Application") under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") for the purpose of exempting the Index Funds of the Trust from various provisions of the 1940 Act and rules thereunder (File No. 812-12254). The information provided in this Rule 19b-4 filing relating to the Index Funds is based on information included in the Application, which includes additional information regarding the Trust and the Index Funds.

S&P Global Materials Index Fund; (9) the iShares S&P Global Telecommunication Services Index Fund; (10) the iShares S&P Global Utilities Index Fund; (11) the iShares S&P Global 1200 Index Fund; (12) the iShares S&P/TOPIX 150 Index Fund; (13) the iShares S&P Asia Pacific 100 Index Fund; (14) the iShares S&P Latin America 40 Index Fund; and (15) the iShares MSCI EAFE Index Fund (each individually a "Fund" and collectively the "Fund").

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1996, the Commission approved an Amex proposal to list and trade under Amex Rules 1000A *et seq.* securities issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index ("Index Fund Shares").⁹

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* the following fifteen series of the iShares[®] Trust:¹⁰ (1) The iShares S&P Global Consumer Discretionary Index Fund; (2) the iShares S&P Global Consumer

⁹ See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (order approving File No. SR-Amex-95-43) ("1996 Order").

¹⁰ The iShares Trust ("Trust") has filed with the Commission an Application for Orders ("Application") under sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") for the purpose of exempting the Index Funds of the Trust from various provisions of the 1940 Act and rules thereunder (File No. 812-12254). The information provided in this Rule 19b-4 filing relating to the Index Funds is based on information included in the Application, which includes additional information regarding the Trust and the Index Funds.

Staples Index Fund; (3) the iShares S&P Global Energy Index Fund; (4) the iShares S&P Global Financials Index Fund; (5) the iShares S&P Global Health Care Index Fund; (6) the iShares S&P Global Industrials Index Fund; (7) the iShares S&P Global Information Technology Index Fund; (8) the iShares S&P Global Materials Index Fund; (9) the iShares S&P Global Telecommunications Services Index Fund; (10) the iShares S&P Global Utilities Index Fund; (11) the iShares S&P Global 1200 Index Fund; (12) the iShares S&P/TOPIX 150 Index Fund; (13) the iShares S&P Asia Pacific 100 Index Fund; (14) the iShares S&P Latin America 40 Index Fund; and (15) the iShares MSCI EAFE Index Fund.

The index on which a particular Fund is based is referred to as an "Underlying Index" and the securities included in the Underlying Index are referred to as "Component Securities." The Underlying Index for each Fund may consist of both U.S. and/or foreign stocks. Descriptions of the Underlying Indexes for the proposed Funds are available in the Commission's Public Reference Room as Exhibits A through P of this filing.¹¹ The Exhibits include index descriptions, component selection criteria, index maintenance and issue changes, the top components of each index, and portfolio composition and characteristics.

Barclays Global Fund Advisors (the "Advisor") is the investment adviser to each Fund. The Advisor is registered under the Investment Advisers Act of 1940 and is a wholly owned subsidiary of Barclays Global Investors, N.A., a wholly-owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Company (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Amex or the Advisor.

iShares will be registered in book-entry form only and the Index Fund will not issue individual share certificates. DTC or its nominee will be the record or registered owner of all outstanding iShares. Beneficial ownership of iShares will be shown in the records of DTC or DTC participants.

¹¹ The Amex deleted Exhibit O, which described the S&P Global 700 Index, from its proposal. See Amendment No. 1. *supra* note 3.

Amendment to Amex Rule 1000A, Commentary .04

The Amex proposes to amend Amex Rule 1000A, Commentary .04 to indicate that transactions in iShares Index Funds of the iShares Trust may be effected until 4 p.m. or 4:15 p.m. (New York time) each business day, as specified by the Amex.¹² Shares of each Fund will trade with a minimum price variation of \$0.01.¹³

“Passive” Indexing Investment Strategy

The investment objective of each Index Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each Fund will utilize a “passive” indexing investment strategy. Specifically, each Fund will utilize a “representative sampling” strategy to attempt to track its Underlying Index.¹⁴ The Funds will attempt to hold a representative sample of the Component Securities in the applicable Underlying Index utilizing quantitative analytical models.¹⁵

A Fund will hold most of the Component Securities of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index. This may be the case, for example, when there are practical difficulties or substantial costs involved in compiling an entire Underlying Index basket which contains hundreds of Component Securities or, in certain instances, when a Component Security is illiquid.

Each fund will concentrate its holdings in investments in issuers of one or more particular industries approximately to the extent that its Underlying Index concentrates in the stocks of particular industry or industries.¹⁶ From time to time, adjustments will be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance as a regulated investment company under the Internal Revenue Code.¹⁷

At least 90% of each Fund’s total assets will be invested in the component securities of its Underlying Index. Each Fund also may invest up to 10% of its total assets in stocks that are not included in its Underlying Index. For example, a Fund may invest in stocks not included in the relevant Underlying Index to reflect various corporate actions such as mergers and other changes in the relevant Underlying Index, such as reconstitutions, additions, and deletions. As long as a Fund invests at least 90% of its total assets in the stocks of its Underlying Index, it also may invest its other assets in futures contracts, options on futures contracts, options, and swaps related to its Underlying Index, as well as cash and cash equivalents.

It is expected that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than 5%. Each Fund’s investment objectives, policies and investment strategies will be fully disclosed in its prospectus and statement of additional information (“SAI”). In addition, the web site for the Funds, www.ishares.com, will contain detailed information on the performance of each Fund, the performance of the Underlying Indexes, and the tracking error for each Fund.¹⁸ The Funds’ annual and semi-annual reports will include disclosure of the Funds’ total return and each Underlying Index’s total return for one-, five-, and 10-year periods, and graphs comparing values of hypothetical \$10,000 investments in the Fund and its Underlying Index.¹⁹ If the tracking error for a Fund exceeds 5%, the Advisor will notify the Trust’s Board of Trustees (“Board”) and discuss appropriate actions with the Board.²⁰

While each Fund will be managed by the Advisor, the Board will have overall responsibility for the Funds’ operations. The composition of the Board is, and will be, in compliance with the requirements of section 10 of the 1940 Act.

such other securities limited for purposes of this calculation is respect of any one issuer to an amount not greater than 5% of the value of that Fund’s assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of its assets may be invested in securities of any one issuer, or two or more that are controlled by the Fund (with the meaning of section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trade or businesses (other than U.S. government securities or the securities of other regulated investment companies) See Amendment No. 2, *supra* note 4.

¹⁸ See Amendment No. 3, *supra* note 5.

¹⁹ See Amendment No. 3, *supra* note 5.

²⁰ See Amendment No. 3, *supra* note 5.

Creation Unit Aggregations

Shares of each Fund (the “iShares”) will be issued on a continuous offering basis in groups of 50,000 or more. These groups of shares are called “Creation Unit Aggregations.” The Funds will issue and redeem iShares only in Creation Unit Aggregations. iShares will be issued at the net asset value (“NAV”) per share next determined after an order in proper form is received. The NAV per share of each Fund is determined as of the close of the regular trading session on the New York Stock Exchange (“NYSE”) on each day that the NYSE is open. It is expected that as of the inception date of each Fund, the value of a Creation Unit Aggregation for each Fund will range from approximately \$2 million to approximately \$7.3 million.

Orders to create iShares must be placed through an Authorized Participant, which is either: (1) A broker-dealer or other participant in the continuous net settlement system of the NSCC; or (2) a participant in the DTC.²¹

Purchasers generally will pay for Creation Unit Aggregations placed through the Distributor by an in-kind deposit with the Trust of a portfolio of securities designated by the Advisor to correspond generally to the price and yield performance of the Fund’s Underlying Index (the “Deposit Securities”), together with an amount of cash (the “Balancing Amount”) specified by the Advisor. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund; and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (the “Deposit Amount”). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. If the Balancing Amount is a positive number (*i.e.*, the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the creator will pay the Balancing Amount to the Trust.²² If the Balancing Amount is a negative number (*i.e.*, the NAV per Creation Unit Aggregation is less than the Deposit Amount), the creator will receive cash in an amount equal to the differently.²³ The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to as a “Portfolio Deposit.”

²¹ See Amendment No. 3, *supra* note 5.

²² See Amendment No. 2, *supra* note 4.

²³ See Amendment No. 2, *supra* note 4.

¹² See Amendment No. 3, *supra* note 5.

¹³ See Amendment No. 2, *supra* note 4.

¹⁴ See Amendment Nos. 2 and 3, *supra* notes 4 and 5.

¹⁵ See Amendment No. 3, *supra* note 4.

¹⁶ See Amendment No. 2, *supra* note 4.

¹⁷ For a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund’s taxable year, (i) at least 50% of the market value of the Fund’s total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with

Availability of Information Regarding the Portfolio Deposit

The Advisor will make available through the Distributor or on each business day prior to the opening of trading on the Exchange (currently 9:30 a.m. Eastern Time) the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous business day) for the relevant Fund. The Portfolio Deposit will be applicable to a Fund (subject to any adjustments to the Balancing Amount, as described in the Application) to effect purchases of Creation Unit Aggregations of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

In addition, the Advisor will provide the NSCC on a daily basis with the name and required number of shares of the Deposit Securities in a Creation Unit Aggregation and the Balancing Amount, which the NSCC will make available to NSCC members through an electronic file that NSCC members can download.²⁴

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant Fund, or resulting from stock splits and other corporate actions. In addition, the Trust reserves the right with respect to each Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security under circumstances specified in the Application. When cash purchases of Creation Unit Aggregations are available or specified for a Fund, they will be effected in essentially the same manner as in-kind purchases of iShares. In the case of a cash purchase, the investor must pay the cash equivalent of the Deposit Securities it would otherwise be required to provide through an in-kind purchase, plus the same Balancing Amount required to be paid by an in-kind purchaser.

The Amex anticipates that institutional investors, arbitrageurs, and the Amex specialist primarily will make

the deposit of Deposit Securities and the Balancing Amount in exchange for iShares.²⁴ Creation Units are separable upon issuance into identical shares which are listed and traded on the Amex. Professionals as well as institutional and retail investors will trade iShares on the Amex.

Availability of Information Regarding the Underlying Indexes

The providers of the Underlying Indexes have advised the Trust that on or before the first day of trading of each Fund, the value of its Underlying Index will be updated intra-day on a real-time basis as individual Component Securities change in price. These intra-day values of the Underlying Indices will be disseminated at regular intervals (currently expected to be every 15 second) throughout the trading day by organizations authorized by each respective Underlying Index provider. In addition, these organizations will disseminate values for each Underlying Index once each trading day based on closing prices in the relevant exchange market.

Availability of Information Regarding the Funds

The Trust intends to maintain a web site that will include, for each Fund, its prospectus and SAI, its Underlying Index and additional quantitative information that will be undated on a daily basis, including daily trading volume, closing price and closing NAV.

On amextrader.com, the Amex will disseminate the NAV for each Fund on a daily basis and the final dividend amounts that each Fund will pay.²⁶ The final dividend amount, which the funds will also disseminate to Bloomberg and other sources, is the amount of dividends to be paid by a Fund for the appropriate period (usually annually).²⁷ In addition, for each Fund the Amex will disseminate at the opening over the Consolidated Tape Association ("CTA") Network B the number of iShares outstanding.²⁸

The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the Exchange's dissemination over Network B, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in

newspapers and other publications and from a variety of on-line services.

Dissemination of Indicative Portfolio Value

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem the proposed iShares, the Amex will disseminate through the facilities of the CTA an updated indicative portfolio value ("Value") for each of the Funds traded on the Amex as calculated by a securities information provider ("Value calculator").²⁹ The Amex anticipates that the methodology utilized in connection with the Funds will be similar to procedures used to calculate the Value for iShares trading currently on the Amex. The Value will be disseminated on a per iShares basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern Time,³⁰ depending on the time the Amex specifies for the trading of iShares. The equity securities values included in the Value are the same as the portfolio values generally utilized in connection with creations and redemptions of iShares in Creation Unit size aggregations on that day. The equity securities included in the Value generally reflect the same market capitalization weighting as the Deposit Securities in the portfolio for the particular iShares Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes the Balancing Amount. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.³¹

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the Value on a per iShares basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the Value that the Amex will disseminate at 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per iShare basis, it is possible that the value of the portfolio of securities held by a

²⁹ See Amendment Nos. 2 and 3, *supra* note 4 and 5.

³⁰ Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, and Yvonne Fraticelli, Division, Commission, on August 6, 2001 ("August 6 Conversation").

³¹ See Amendment No. 2, *supra* note 4.

²⁵ See Amendment No. 2, *supra* 4.

²⁶ See Amendment No. 3, *supra* note 5.

²⁷ See Amendment No. 4, *supra* note 6.

²⁸ See Amendment No. 3, *supra* note 5.

²⁴ See Amendment No. 4 *supra* note 6.

Fund may diverge from the Deposit Securities values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.³²

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstance (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different from circumstances causing any index fund or trust to diverge from an underlying benchmark index.³³

The Amex believes that the dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with iShares trading on the Amex or the creation or redemption of iShares.³⁴

For each Fund, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. For funds that include foreign stocks the principal foreign markets for which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign currency market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.³⁵

Redemption of Creation Unit Aggregations

Creation Unit Aggregations of each Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each fund will be redeemed principally in kind, together with a balancing cash payment; however, as described in the Application, Creation Unit Aggregations sometimes may be redeemed for cash.

Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation to redeem through the Trust. Redemption orders must be placed through an Authorized Participant, which is either: (1) A broker-dealer or other participant in the continuous net settlement system of the NSCC; or (2) a participant in the DTC.³⁶

Each Fund will redeem Creation Unit Aggregations in exchange for portfolio securities of the Fund ("Fund Securities") in effect on the date a request for redemption is made and a specified cash amount, the "Cash Redemption Amount," as defined below. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.³⁷ The Advisor will publish daily through the Distributor the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund and which a redeemer will receive from the Fund.

The Cash Redemption Amount on any given business day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. Specifically, the Cash Redemption Amount is an amount equal to the difference between the iShares being

redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities. To the extent that the Fund Securities have a value greater than the NAV of the iShares being redeemed, the redeeming beneficial owner must make a compensating cash payment to the Fund equal to the differential between the value of the Fund Securities and the NAV of the iShares being redeemed.

The Trust may make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities on a redeeming investment banking firm's restricted list.

Other Characteristics of iShares

Each Fund will declare and pay dividends from net investment income at least annually in the same manner as other open-end investment companies. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by beneficial owners for reinvestment of their cash proceeds but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact their broker to ascertain the availability and a description of the Service through their broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables to participate in the Service and such investors should ascertain from their broker the necessary details. iShares acquired pursuant to the Service will be held by the beneficial owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

With each distribution, the Trust will furnish to DTC participants for distribution to beneficial owners of iShares of each Fund a statement setting forth the amount being distributed, expressed as a dollar amount per share. Beneficial owners also will receive annual notification as to the tax status of the Funds' distribution. Promptly after the end of each fiscal year, the Trust will furnish to DTC participants, for distribution to each person who was

³⁶ See Amendment No. 2, *supra* note 5.

³⁷ In some circumstances and/or in certain countries, it may not be practicable, convenient, or permissible under the current law for a Fund to purchase and redeem shares on an "in-kind" basis exclusively. In addition, over time, the Trust may conclude that operating on an exclusively "in-kind" basis for one or more funds may present operational problems for such funds. Therefore, the Trust may permit, in its discretion, with respect to one or more funds under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. For the Trust to preserve maximum efficiency and flexibility, the Trust reserves the right to determine in the future that Shares of one or more Funds may be purchased in Creation Unit Aggregations on a cash-only basis. The decision to permit cash-only purchases of Creation Unit Aggregations, to the extent made at all in the future, would be made if the Trust and the Advisor believed such method would substantially minimize the Trust's transactional costs or would enhance the Trust's operational efficiencies. This would likely happen only in limited circumstances. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has the liquid resources at hand to make the necessary purchases. If a Fund were to receive in-kind stocks on such a day, it would have to sell many of such stocks and acquire new stocks to properly track its Underlying Index, thus incurring transaction costs that could have been avoided (or at least minimized) if the Fund had received payment for the Creation Unit Aggregations in cash.

³³ See Amendment No. 2, *supra* note 4.

³⁴ See Amendment No. 2, *supra* note 4.

³⁵ See Amendment No. 2, *supra* note 4.

³⁶ See Amendment No. 2, *supra* note 4.

a beneficial owner of iShares at the end of the fiscal year, an annual report of the Trust containing financial statements audited by independent accountants of nationally recognized standing and such other information as may be required by applicable laws, rules and regulations. Copies of annual and semi-annual shareholder reports will also be provided to the DTC participants for distribution to beneficial owners of iShares.

Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A, "Initial and Continued Listing." The Amex anticipates that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. The Amex anticipates that the initial price of an iShare for each Fund would be approximately \$50 to \$100.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective of providing investment results that correspond generally to the price and yield performance of each Underlying Index.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is \$5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all funds of the Trust listed on the Exchange.

Stop and Stop Limit Orders

Commentary .04(c) to Amex Rule 154, "Orders Left with Specialist," provides that stop and stop limit orders to buy or sell a security, other than an option,³⁸ the price of which is derivatively priced based upon another security or index or securities may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment.³⁹

³⁸ Amex Rule 950(f) and Commentary .01 to Amex Rule 950(f) apply to options.

³⁹ Amex Rule 154, Commentary .04(c)(v) states that Commentary .04(c), regarding election of stop and stop limit orders by quotation, shall apply to

Amex Rule 190

Commentary .04 to Amex Rule 190, "Specialist's Transactions with Public Customers," applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer an appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Trust has requested an exemptive order granting relief from the prospectus delivery requirements imposed by section 24(d) of the 1940 Act.⁴⁰ In an Information Circular to members, the Amex will inform members of the prospectus or product description delivery requirements applicable to iShares prior to the commencement of trading.

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁴¹ In addition, trading in iShares will be halted if the circuit breakers parameters under Amex Rule 117, "Trading Halts Due to Extraordinary Market Volatility," have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411, "Duty to Know and Approve Customers."

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, the Amex will inform members

such derivative securities as the Amex designates from time to time as eligible for such treatment.

⁴⁰ 15 U.S.C. 870a-24(d). See Amendment No. 3, *supra* note 5.

⁴¹ See Amex Rule 918C.

and member organizations that each Fund's prospectus and SAI describe procedures for purchases and redemptions of iShares in Creation Unit size aggregations, and that iShares are not individually redeemable but are redeemable only in Creation Unit size aggregations or multiples thereof.

Surveillance

The Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange.

(2) Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1, 2, 3, and 4 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR-Amex-2001-34 and should be submitted by September 11, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Amex has requested that the Commission approve the proposal on an accelerated basis. The Amex notes that the proposed iShares are similar in structure and operation to Index Fund Shares approved previously by the Commission and that the component securities of the Underlying Indexes are among the stocks with the highest liquidity and market capitalization in their respective countries. The Amex believes that the proposal does not raise issues that the Commission has not considered in connection with previous proposed rule changes relating to Index Fund Shares.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5).⁴² Specifically, the Commission finds that the proposal to list and trade the proposed iShares will provide investors with a convenient and less expensive way or participating in the foreign securities markets. The Commission believes that the Amex's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell single securities at negotiated prices throughout the business day that represent the performance of several portfolios of stocks.⁴³ Accordingly, the Commission finds that the Amex's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and

⁴² 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴³ The Commission notes that unlike open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in iShares can redeem in Creation Unit size aggregations only.

the public interest, consistent with section 6(b)(5) of the Act.⁴⁴

Amex Rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares. The Commission has approved the listing and trading of various Index Fund Shares on the Amex, including the following: 23 series of iShares MSCI Index Funds (formerly MSCI World Equity Benchmark Shares ("WEBS"));⁴⁵ series of the iShares Trust based on the S&P Europe 350 Index and the S&P/TSE 60 Index;⁴⁶ nine series of Select Sector SPDRs and one series of the Technology 100 Index Fund;⁴⁷ and shares of the streetTracks Dow Jones Global Titans Index Fund.⁴⁸

Similar to these Index Shares, the Commission believes that the proposed iShares will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing in interest in a portfolio of securities designed to reflect substantially the applicable Underlying Index. The estimated cost of individual iShares, approximately \$50 to \$100, should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, unlike the case with standard open-end investment companies specializing in such stocks, investors will be able to trade iShares continuously throughout the business day in secondary market transactions at negotiated prices.⁴⁹ Accordingly, the

⁴⁴ Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

⁴⁵ See 1996 Order (approving the listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.* and 17 series of WEBS based on MSCI foreign indexes), *supra* note 9; and Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (order approving File No. SR-Amex-98-49) (approving the listing and trading of six series of WEBS based on MSCI Indexes).

⁴⁶ See Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (order approving File No. SR-Amex-99-49).

⁴⁷ See Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (order approving File No. SR-Amex-98-29).

⁴⁸ See Securities Exchange Act Release No. 43338 (September 25, 2000) 65 FR 59235 (October 4, 2000) (order approving File No. SR-Amex-00-53).

⁴⁹ Because of the potential arbitrage opportunities, the Commission believes that iShares will not trade at a material discount or premium in relation to their NAV. The mere potential for arbitrage should keep the market price of iShares comparable to their NAV; therefore, arbitrage activity likely will not be significant.

proposed iShares will allow investors to: (1) Respond quickly to market changes through intraday trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of iShares will be derived from and based on the value of the securities and cash held in the Fund, iShares are not leveraged instruments. Accordingly, the level of risk involved in the purchase or sale of iShares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the iShares is based on a portfolio of securities. Nevertheless, the Commission believes that the unique nature of iShares raises certain product design, disclosure, trading and other issues that must be addressed.

A. Generally

The Commission believes that the proposed iShares are reasonably designed to provide investors with an investment vehicle that substantially reflects in value their Underlying Indexes and, in turn, the performance of: (1) The component securities of the S&P Global 1200 Index;⁵⁰ (2) the component securities comprising 10 S&P global market sector indexes;⁵¹ (3) the component securities comprising the S&P TOPIX 150 Index, the S&P Asia Pacific 100 Index, and the S&P Latin America 40 Index;⁵² and (4) the

⁵⁰ The S&P Global 1200 Index is comprised of selected equities trading on the exchanges of 29 subject countries. In a manner similar to the S&P 500 Index, the S&P Global 1200 Index tracks the leading companies in the leading industries for their home countries. The S&P Global 1200 Index is comprised of six distinct regional component indexes: the S&P 500 Index (U.S.); the S&P/TSE 60 Index (Canada); the S&P Latin America 40 Index; the S&P TOPIX 150 Index (Japan); the S&P Asia Pacific 100 Index; and the S&P Europe 350 Index. See Exhibit K.

⁵¹ The sector indexes are: the S&P Global Consumer Discretionary Index; the S&P Global Consumer Staples Index; the S&P Global Energy Index; the S&P Global Financials Index; the S&P Global Health Care Index; the S&P Global Industrials Index; the S&P Global Information Technology Index; the S&P Global Materials Index; the S&P Global Telecommunication Services Index; and the S&P Global Utilities Index. Each component security of the sector indexes is a component security of the S&P Global 1200 Index.

⁵² The S&P/TOPIX 150 Index, which includes 150 securities selected from each major sector of the Tokyo market, represents approximately 70% of the market value of the Japanese equity market. The S&P Asia Pacific 100 Index is comprised of stocks from Australia, Hong Kong, Malaysia, New Zealand, Singapore, South Korea, and Taiwan. The S&P Latin America 40 Index is comprised of stocks from Argentina, Brazil, Chile, and Mexico. See Exhibits L, M, and N.

component securities comprising the MSCI EAFE Index.⁵³

The Commission notes that S&P and MSCI impose specified criteria in the selection of the component securities of the Underlying Indexes. The component securities included in the Underlying Indexes maintained by S&P are components of the S&P Global 1200 Index, which, in a manner similar to the S&P 500 Index, is designed to track the leading companies in the leading industries in 29 countries.⁵⁴ The component securities of the Underlying Indexes maintained by S&P must meet criteria for sector representation, liquidity, and size.⁵⁵ S&P analyzes the financial and operating condition of potential components of the Underlying Indexes and seeks to minimize turnover among the components of the Underlying Indexes.⁵⁶ With regard to the MSCI EAFE Index, an index comprised of component securities from 21 countries outside North America, MSCI seeks to have 85% of the free-float market capitalization of a country's stock market represented in the EAFE Index.⁵⁷ MSCI seeks to select stocks with good liquidity and float, and seeks to avoid cross-ownership.⁵⁸ The Commission believes that S&P's and MSCI's selection criteria should serve to ensure that the Component Securities of the Underlying Indexes are well capitalized and actively traded.

The Commission notes that at least 90% of each Fund's total assets will be invested in the Component Securities of its Underlying Index and that each Fund will hold most of the Component Securities of its Underlying Index. As noted above, each Fund will concentrate its holdings in investments in issues of one or more particular industries to the extent that its Underlying Index concentrates in the stocks of a particular industry or industries.⁵⁹ In addition, each Fund will maintain regulated investment company compliance, which requires, among other things, that, at the close of each quarter of the Fund's taxable year, not more than 25% of its total assets may be invested in the

securities of any one issuer.⁶⁰ While the Commission believes that these requirements should help to reduce concerns that the Funds could become a surrogate for trading in a single or a few unregistered stocks, in the event that a Fund were to become such a surrogate, the Commission would expect the Amex to take action immediately to delist the securities to ensure compliance with the Act.

As noted above, each Fund will use a representative portfolio sampling strategy to attempt to track its Underlying Index.⁶¹ Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error.⁶² It is expected that each Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%. If the tracking error for a Fund exceeds 5%, the Advisor will notify the Board and discuss appropriate actions with the Board.⁶³ The Commission notes that the web site for the Funds will provide detailed information on the performance of each Fund, the performance of the Underlying Indexes and the tracking error for each Fund.⁶⁴ In addition, the Funds' annual and semiannual reports will include disclosure regarding the Funds' total return and each Underlying Index's total return for one-, five-, and 10-year periods, and graphs comparing hypothetical \$10,000 investments in the Funds and their Underlying Indexes.⁶⁵ While the Commission believes that the proposed requirements for the Funds, and the expected tracking error or less than 5%, should be adequate to characterize the proposed Funds as bona fide index funds, the Commission would be concerned if a Fund's portfolio failed to substantially reflect its Underlying Index.⁶⁶

B. Disclosure

The Commission believes that the proposal should ensure that investors have information that will allow them to be adequately appraised of the terms, characteristics, and risks of trading iShares. Investors purchasing the

proposed Shares will be required to receive either a prospectus or, as discussed below, a product description of the iShares.⁶⁷ If the proposed iShares are not granted relief from the prospectus delivery requirements of the 1940 Act, then investors purchasing iShares will be required to receive a prospectus prior to or concurrently with the confirmation of a transaction therein. Because iShares will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors and to all investors purchasing such securities in secondary market transactions on the Amex.

Alternatively, if the proposed iShares are granted relief from the prospectus delivery requirements of the 1940 Act, they will be subject to Commentary .03 to Amex Rule 1000A, which provides for delivery of a product description for series of Index Fund Shares that have been granted relief from the prospectus delivery requirements of the 1940 Act. The prospectus or product description will address the special terms and characteristics of the Funds, including a statement regarding their redeemability and method of creation, and a statement regarding the likelihood of whether such products will trade below, at, or above NAV, based on the role of discounts or premiums.⁶⁸ Under Commentary .03, the delivery requirement will extend to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. In addition, Commentary .03 provides that a member or member organization must deliver a prospectus to a customer upon request.

The Commission notes that prior to the commencement of trading in the proposed iShares, the Amex will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular will address members' responsibility to deliver a prospectus or product description to all investors and will highlight the characteristics of purchases in iShares, including that they are redeemable only in Creation Unit size aggregations or multiples thereof. The circular will advise members that the Fund prospectus and

⁵³ The MSCI EAFE Index is designed to represent developed stock markets outside of North America. The MSCI EAFE Index includes equity securities from Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. See Exhibit P.

⁵⁴ See Exhibit K.

⁵⁵ See Exhibits A through N.

⁵⁶ See Exhibits A through N.

⁵⁷ See Exhibit P.

⁵⁸ See Exhibit P.

⁵⁹ See Amendment No. 2 *supra* note 4.

⁶⁰ See Amendment No. 2, *supra* note and note 17, *supra*.

⁶¹ See Amendment Nos. 2 and 3, *supra* notes 4 and 5.

⁶² See Amendment No. 3, *supra* note 5.

⁶³ See Amendment No. 3, *supra* note 5.

⁶⁴ See Amendment No. 3, *supra* note 5.

⁶⁵ See Amendment No. 3, *supra* notes 3 and 5.

⁶⁶ Among other issues that may arise under the federal securities laws, such an occurrence could raise the issue of whether trading of the proposed iShares would remain consistent with Amex listing standards for Index Fund Shares, as well as the surrogate trading issue discussed above. See text accompanying notes 58 and 59, *supra*.

⁶⁷ As noted above, the Trust has requested an exemptive order granting relief from the prospectus delivery requirements imposed by section 24(d) of the 1940 Act.

⁶⁸ See August 6 Conversation, *supra* note 30.

SAI describe procedures for the purchase and redemption of iShares in Creation Unit size. In addition, the circular will address Amex members' responsibilities under Amex Rule 411 regarding transactions in Fund shares. Amex Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.⁶⁹

C. Listing and Trading of iShares

The Commission finds that adequate rules and procedures exist to govern the listing and trading of iShares. iShares will be deemed equity securities subject to Amex rules governing the trading of equity securities,⁷⁰ including, among others, rules governing trading halts,⁷¹ responsibilities of the specialist, account opening and customer requirements, and the election of stop and stop limit orders.

In addition, the Funds will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Amex. As the Commission has noted previously,⁷² the listing and delisting criteria for Index Fund Shares should help to ensure that a minimum level of liquidity will exist in each series of Index Fund Shares to allow for the maintenance of fair and orderly markets. The delisting criteria also will allow the Amex to consider the suspension of trading and the delisting of a series of iShares if an event were to occur that made further dealings in such securities inadvisable. This will give the Amex flexibility to delist iShares if circumstances warrant such action. For example, as noted above, in the event that iShares became a surrogate for trading a single or few unregistered securities, such an event could raise issues that would require the delisting of iShares to ensure compliance with the Act. Accordingly, the Commission believes that the rules governing the trading of iShares provide adequate safeguards to prevent

manipulative acts and practices and to protect investors and the public interest.

As noted above, the Amex expects to require that a minimum of two Creation Units (100,000 iShares) be outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.

The Commission believes that the Amex's proposal to trade iShares with a minimum price variation of \$.01⁷³ is consistent with the Act. The Commission believes that such trading may enhance market liquidity and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Funds. Additionally, the Commission believes that the proposed original listing fee of \$5,000 is reasonable, as is the proposed method for calculating the annual fee.

D. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuers as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market making responsibilities. In addition, because the specialist will only be able to purchase and redeem iShares on the same terms and conditions as any other investor in accordance with the terms of the Fund prospectus and SAI, the Commission believes that concerns regarding potential abuse are minimized. The Amex's existing surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Amex's proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.

E. Stop and Stop Limit Orders

The Commission believes that the Amex's proposal to designate the proposed iShares as eligible for election by quotation with the prior approval of a Floor Official is consistent with the

Act. Amex Rule 154, Commentary .04(c) generally provides that stop and stop limit orders to buy and sell a security or index of securities may, with prior approval of a Floor Official, be elected by quotation, as set forth in Amex Rule 154, Commentary .04. Amex Rule 154, Commentary .04(c)(v) states that election by quotation only is available for such derivative securities as are designated by the Amex as eligible for such treatment. The Amex has so designated Index Fund Shares, including the proposed iShares.

The Commission believes that allowing stop and stop limit orders in iShares to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, iShares are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.⁷⁴

F. Amendment to Amex Rule 1000A, Commentary .04

The Commission believes that the proposal to amend Amex Rule 1000A, commentary 0.4⁷⁵ to provide that transactions in iShares may be effected until 4 p.m. or 4:15 p.m., as specified by the Amex, will provide the Amex with flexibility in the hours of trading for iShares. The Commission notes that the generic listing standards in Amex Rule 1000A, Commentary .02 provide that trading for Index Fund Shares will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m., as specified by the Amex.⁷⁶

G. Surveillance

The Amex represents that the surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Amex. The Commission believes that the surveillance procedures developed by the Amex for Index Fund Shares are adequate to address the concerns associated with the listing and trading of the iShares, including any concerns associated with purchasing and redeeming Creation Units.

With regard to the MSCI EAFE Index Fund, the Commission notes that when a broker-dealer, such as Morgan Stanley or a broker-dealer's affiliate, such as MSCI, is involved in the development

⁶⁹ See Amex Rule 411.

⁷⁰ See August 6 Conversation, *supra* note 30.

⁷¹ As noted above, in addition to other factors that may be relevant, the Amex may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in iShares. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

⁷² See 1996 Order, *supra* note 9.

⁷³ See Amendment No. 2, *supra* note 4.

⁷⁴ See generally Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (order approving File No. SR-Amex-90-31) (relating to stop and stop limit orders in certain equity securities).

⁷⁵ See Amendment No. 3, *supra* note 5.

⁷⁶ See Amex Rule 1000A, Commentary .02(f).

and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material non-public information regarding changes to the component stocks of the EAFE Index Fund that are the same as the procedures MSCI applies to other iShares MSCI Index Funds.⁷⁷ The Commission believes,⁷⁸ as it has concluded previously, that the information barrier procedures put in place by MSCI address the unauthorized transfer and misuse of material, non-public information.

H. Dissemination of Information Regarding the Funds

The Commission believes that the Value that the Amex proposes to have disseminated for the Funds will provide investors with timely and useful information concerning the value of the individual Funds. The Exchange presents that the Value information will be disseminated through the facilities of the CTA every 15 seconds from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time,⁷⁹ depending on the time the Amex specifies for the trading of iShares, and should closely approximate the value per Fund share of the portfolio of the Deposit Securities and Balancing Amount for each Fund, except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor).⁸⁰ The Commission expects that the Amex will monitor the disseminated Value and, if the Amex were to determine that the Value does not closely track the applicable iShares series, it would arrange to disseminate an adequate alternative value.

The NAV per share of each Fund will be determined as of the close of the regular trading session on the NYSE on each that the NYSE is open. The Amex will disseminate the NAV for each Fund on a daily basis⁸¹ and the final dividend amounts to be paid for each Fund on amextrader.com.⁸² For each Fund, the Amex will disseminate over Network B

at the opening the number of iShares outstanding.⁸³

The Trust intends to maintain a web site that will include, for each Fund, its prospectus, SAI, Underlying Index, and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price, and closing NAV. The web site for the funds also will provide information regarding the tracking error for each Fund.⁸⁴ In addition, the Funds' annual and semi-annual report will include disclosure of the Funds' total return and each Underlying Index's total return for one-, five-, and 10-year periods, and graphs comparing value of hypothetical \$10,000 investments in the Fund and its Underlying Index.⁸⁵

Organizations authorized by each respective Underlying Index provider will disseminate intra-day values of the Underlying Indexes at regular intervals, currently expected to be every 15 seconds, throughout the trading day. In addition, these organizations will disseminate values for each Underlying Index once each trading day based on the closing prices in the relevant exchange market.

As described more fully above, the Advisor will make available through the Distributor on each business day prior to the opening of trading on the Exchange the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous business day) for each Fund to effect purchases of Creation Unit Aggregations of the Fund.

In addition, the Advisor will provide the NSCC on a daily basis with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation and the Balancing Amount, which the NSCC will make available to NSCC members through an electronic file that NSCC members can download.⁸⁶

I. Scope of the Commission's Order

The Commission is approving the 15 series of iShares described herein. Other similarly structured products, or additional iShares Funds based on indexes that include securities not listed on a national securities exchange or The Nasdaq Stock Market, would require review by the Commission pursuant to section 19(b) of the Act prior to being traded on the Amex.

J. Accelerated Approval of the Proposal and Amendment Nos. 1, 2, 3, and 4

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1, 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As discussed more fully above, the Commission has approved the listing and trading of various Index Fund Shares on the Amex. Several of the Amex's previous proposals to list and trade Index Fund Shares were published for comment and the Commission received no comments regarding the proposals. Accordingly, the Commission believes that it is reasonable to make the proposed iShares available to investors as soon as possible. Amendment No. 1 clarifies the Amex's proposal by deleting the S&P Global 700 Index Fund from the new series of iShares that the Amex proposes to list and trade. Amendment No. 2 strengthens the Amex's proposal by, among other things, representing the MSCI has implemented procedures to prevent the misuse of material non-public information regarding the MSCI EAFE Index, describing the Value for each Fund that the Amex will disseminate during regular Amex trading Hours, and describing the requirements for a Fund to qualify for tax treatment as a regulated investment company. Amendment No. 3 strengthens the Amex's proposal by, among other things, discussing the tracking error for the Funds, defining an "Authorized Participant," and revising Amex Rule 1000A, Commentary .04 to indicate the transactions in iShares may be effected until 4 or 4:15 (New York) time each business day, as specified by the Amex. Amendment No. 4 clarifies the proposal by indicating that the Advisor will provide the NSCC with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation and the Balancing Amount, and by identifying the final dividend amount as the amount to be paid by a Fund for the appropriate period. Accordingly, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,⁸⁷ to approve the proposal and Amendment Nos. 1, 2, 3, and 4 to the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2001-

⁸⁷ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁷⁷ See Amendment No. 2, *supra* note 4.

⁷⁸ See Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (Order approving File No. SR-Amex-98-49).

⁷⁹ See August 6 Conversation, *supra* note 30.

⁸⁰ See Amendment No. 2, *supra* note 4.

⁸¹ See August Conversation, *supra* note 29.

⁸² See Amendment No. 3, *supra* note 5. As noted above, the final dividend amount, which the Funds will also disseminate to Bloomberg and other sources, is the amount of dividends to be paid by a Fund for the appropriate period (usually annually). See Amendment No. 4, *supra* note 6.

⁸³ See Amendment No. 3, *supra* note 5.

⁸⁴ See Amendment No. 3, *supra* note 5.

⁸⁵ See Amendment No. 3, *supra* note 5.

⁸⁶ See Amendment No. 4, *supra* note 6.

34), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸⁸

Jonathan G. Katz,
Secretary.

[FR Doc. 01-21014 Filed 8-20-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44693; File No. SR-CBOE-2001-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Changes to the Exchange's Delisting Criteria

August 13, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 29, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 3, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed to change CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange ("Delisting Criteria Rule" or "CBOE Rule 5.4").

The text of the proposed rule change, as amended, appears below. New text is in italics; deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * * * *

Chapter V—Securities Dealt In

* * * * *

Withdrawal of Approval of Underlying Securities

Rule 5.4

Whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason no longer approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore may prohibit any opening purchase transactions in series of options of that class previously opened, to the extent it deems such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering the underlying security. When all option contracts in respect to any underlying security that is no longer approved have expired, the Exchange may make application to the Securities and Exchange Commission to strike from trading and listing all such option contracts.

. . . Interpretations and Policies

.01 The Board of Directors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to Paragraphs (a), (b), or (c) listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(a) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Securities Exchange Act of 1934.

(b) There are fewer than 1,600 holders of the underlying security.

(c) The trading volume (in all markets in which the underlying security is traded) was less than 1,800,000 shares in the preceding twelve months.

(d) The market price per share of the underlying security closed below [~~\$5~~] \$3 on the previous trading day [on a majority of the business days during the preceding six calendar months] as measured by the highest closing price reported in any market in which the underlying security traded.

(e) The issuer has failed to make timely reports as required by applicable requirements of the Securities Exchange Act of 1934, and such failure has not been

corrected within 30 days after the date the report was due to be filed.

(f) The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

(g) If an underlying security is approved for options listing and trading under the provisions of Interpretation and Policy .05 of Rule 5.3, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including "when-issued" trading, may be taken into account in determining whether the trading volume and market price requirements of paragraphs (c) and (d) of this Interpretation and Policy .01, as well as the trading volume and market price requirements of Interpretation and Policy .04 of this Rule 5.4, are satisfied, provided, however, that in the case of a Restructure Security approved for options listing and trading under paragraph (d) of Interpretation and Policy .05 of Rule 5.3, such trading volume requirements must be satisfied based on the trading volume history of the Restructure Security.

.02 In connection with Paragraph (d) of Interpretation and Policy .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than [~~\$5~~]3[as measured by the highest closing price reported in any market in which the underlying security trades. Further, no series of options contracts will be opened with a strike price of less than \$5.00 per share]. *Subject to Paragraph (d) of Interpretation and Policy .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above \$3 at the time such additional series are authorized for trading. For purposes of this Interpretation .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in any market at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price reported in any market in which the security is traded on the last trading day before the series are added.*

.03 No change.

[.04 Notwithstanding paragraph (d) to Interpretation .01 and Interpretation .02, the Exchange may continue to open for trading additional series of options contracts of a class covering an underlying security, provided.

(a) The aggregate market value of the underlying security equals or exceeds \$50 million;

(b) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all expiration months;

⁸⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 1, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made technical corrections to the rule text, clarified when the CBOE can open additional series of options contracts covering an underlying security, and described how the CBOE intends to measure the market price of the underlying security in the context of the instant proposed rule change.