

For The Nuclear Regulatory Commission  
**James E. Lyons,**  
*Director, New Reactor Licensing Project*  
*Office of Nuclear Reactor Regulation.*  
 [FR Doc. 01-27577 Filed 11-1-01; 8:45 am]  
**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Sunshine Act Meeting

**AGENCY:** Board of Governors, Postal Service.

**ACTION:** Notification of items added to meeting agenda and change in dates and times of meeting.

**DATE OF MEETING:** November 5 and 6, 2001.

**STATUS:** Closed and Open.

**PREVIOUS ANNOUNCEMENT:** By paper vote on October 26 and 29, 2001, the Board of Governors of the United States Postal Service voted unanimously to add these items to the agenda of its closed and open meeting and to change the times and dates and that no earlier announcement was possible. The General Counsel of the closed session item may be properly closed to public observation under the Government in the Sunshine Act.

**STATUS:** November 5-11 a.m. (Closed); November 6-8:30 a.m. (Open)

#### MATTERS TO BE CONSIDERED:

Monday, November 5-11 a.m. (Closed)

1. Rate Case R2001-1 Update.

Tuesday, November 6-8:30 a.m. (Open).

1. Minutes of the Previous Meetings, October 22, and October 1-2, 2001.
2. Remarks of the Postmaster General and CEO.
3. Report from the Chief Postal Inspector.
4. Human Resources/Report from the Surgeon General.
5. Report on Operations and Service.
6. Report on Equipment for Handling Hazardous Materials.
7. Report on Finances.
8. Tentative Agenda for the December 3-4, 2001, meeting in Washington, DC.

**CONTACT PERSON FOR MORE INFORMATION:**  
 David G. Hunter, Secretary of the Board,  
 U.S. Postal Service, 475 L'Enfant Plaza,  
 SW., Washington, DC. 20260-1000.  
 Telephone (202) 268-4800.

**David G. Hunter,**  
*Secretary.*

[FR Doc. 01-27724 Filed 10-31-01; 2:15 pm]

**BILLING CODE 7710-12-M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 5, 2001:

An open meeting will be held on Wednesday, November 7, 2001, in Room 1C30, the William O. Douglas Room, at 10 a.m.

The subject matters of the open meeting scheduled for Wednesday, November 7, 2001, will be:

1. The Commission will consider whether to propose amendments to rule 17a-8 under the Investment Company Act of 1940. Rule 17a-8 permits certain affiliated investment companies to merge without obtaining individual exemptive relief. The amendments to Rule 17a-8 would expand the types of mergers that can proceed under the rule. The amendments would also add to the rule certain new conditions designed to protect the interests of fund shareholders.

For further information, please contact Hester Peirce, Attorney, Division of Investment Management, at (202) 942-0690.

2. The Commission will consider a recommendation to issue a concept release regarding actively managed exchange-traded funds. Currently, all exchange-traded funds are based on various equity market indices. The concept release would seek comment from a wide range of parties on potential issues raised by the prospect of an exchange-traded fund with an actively managed portfolio.

For further information, please contact David B. Smith, Associate Director, Division of Investment Management at (202) 942-0525, Nadya B. Roytblat, Assistant Director, Division of Investment Management at (202) 942-0564, or Michael W. Mundt, Branch Chief, Division of Investment Management at (202) 942-0564.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 30, 2001.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-27679 Filed 10-31-01; 12:15 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44900; File No. SR-Amex-2001-45]

### 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 Listing Additional Funds of iShares, Inc. Based on Foreign Stock Indexes

October 25, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 2, 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 October 5, 2001 the Amex filed Amendment No. 1 to the proposal.<sup>3</sup> On October 19, 2001, the Amex filed Amendment No. 2 to the proposal.<sup>4</sup> On October 24, 2001, the Amex filed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Department, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 4, 2001 ("Amendment No. 1"). Amendment No. 1 provided additional information concerning the proposal, including (1) the minimum size and predicted price range of Creation Unit Aggregations; (2) in-kind exchange procedures; (3) the purpose of the Balancing Amount that is used in the creation of Creation Unit Aggregations; (4) iShare redemption procedures; (5) the final dividend amount and method of dissemination; (6) fees associated with buying and selling baskets of stocks in countries with local transfer restrictions; (7) a representation by Amex on preventing excessive weighting and reducing concern that an Index Fund could become a surrogate for trading in unregistered securities; (8) a representation that Barclays Global Fund Advisors seeks to minimize tracking error; (9) 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 to the MSCI indexes underlying iShare Funds; and (9) the time of day when Net Asset Values will be determined for a given Index Fund.

<sup>4</sup> See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 18, 2001 ("Amendment No. 2"). Amendment No. 2: (1) Noted that iShares, Inc. had amended its application for certain exemptions under the Investment Company Act of 1940 ("1940 Act") to add three funds not included in the original application; (2) clarified that Fund Participants must be a Depository Trust Company ("DTC") Participant; (3) made technical changes to descriptions of Balancing Amount and redemption procedures; (4) clarified the level of the Funds' investment in their underlying indices.

Amendment No. 3 to the proposal.<sup>5</sup> On October 25, 2001, the Amex filed Amendment No. 4 to the proposal.<sup>6</sup> 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.* seven additional iShares<sup>SM</sup> MSCI Index Funds (each an "Index Fund" or "Fund"), with each Fund based on one of the following indices compiled by Morgan Stanley Capital International Inc. ("MSCI"): (1) MSCI Europe Index; (2) MSCI Emerging Markets (Free) Index; (3) MSCI Emerging Markets Latin America Index; (4) MSCI All Country World Ex USA Index; (5) MSCI All Country Far East (Free) Ex Japan Index; (6) MSCI Pacific (Free) Ex Japan Index; and (7) MSCI Israel Index. 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, and C below, of the most significant aspects of such statements.

<sup>5</sup> See letter from Michael Cavalier, Associate General counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 23, 2001 ("Amendment No. 3"). Amendment No. 3: clarified that fees are assessed to offset market impact costs of buying and selling baskets of stocks in countries with local transfer restrictions.

<sup>6</sup> See letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex, to Steven Johnston, Special Counsel, Division, Commission, dated October 25, 2001 ("Amendment No. 4"). Amendment No. 4: clarified (1) further the level of the Funds investment in their underlying indices; (2) the Exchange will disseminate certain information to the National Securities Clearing Corporation ("NSCC") every 15 seconds; (3) Fund tracking error will be disseminated via an internet website; and (4) further the description of Balancing amount.

### **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").<sup>7</sup>

The first Index Fund Shares approved by the Commission and listed on the Exchange were seventeen series of World Equity Benchmark Shares<sup>TM</sup> (later re-named iShares<sup>SM</sup> MSCI Index Funds) issued by Foreign Fund, Inc. (now iShares, Inc.), based on the following MSCI indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and United Kingdom.<sup>8</sup> These funds have been trading on the Amex since March 18, 1996.<sup>9</sup>

On May 2, 2000, the Commission approved the listing of additional Index Funds of iShares Inc. based on the following MSCI Indices: MSCI EMU Index; MSCI Brazil (free) Index; MSCI South Korea Index; MSCI South Africa Index; MSCI Taiwan Index; and MSCI United States Index.<sup>10</sup>

The Amex now proposes to list and trade under Amex Rules 1000A *et seq.* the following additional MSCI Index Funds: (1) MSCI Europe Index Fund; (3) MSCI Emerging Markets (Free) Index Fund; (3) MSCI Emerging Markets Latin America Index Fund; (4) MSCI All Country World Ex USA Index Fund; (5) MSCI All Country Far East (Free) Ex Japan Index (Fund); (6) MSCI Pacific (Free) Ex Japan Index Fund; and (7) MSCI Israel Index Fund (each individually a "Fund" and collectively the "Funds").<sup>11</sup>

<sup>7</sup> 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").

<sup>8</sup> "MSCI" and "MSCI Indices" are service marks of Morgan Stanley & Co. Incorporated.

<sup>9</sup> Trading of these funds was specifically approved in the 1996 Order.

<sup>10</sup> Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000).

<sup>11</sup> iShares, Inc. has filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the Index Funds referenced herein from various provisions of the 1940 Act and rules thereunder (File No. 812-12290). The iShares MSCI All Country World Ex USA Index Fund; iShares

Issuances of iShares are made only in Creation Unit Aggregations of 50,000 shares or more. The size of the applicable Creation Unit Aggregation will be set forth in the Fund's prospectus, and it is currently anticipated that the price of a Creation Unit Aggregation will range from at least \$450,000 to approximately \$25,000,000. iShares, Inc. issues and sells shares of the Index Funds through SEI Investments Distribution Co., the Distributor and principal underwriter, on a continuous basis at the net asset value per share next determined after an order to purchase iShares in Creation Unit size aggregations is received in proper form. Creation Unit Aggregations may be purchased only by or through a participant that has entered into a participant agreement with the Distributor ("Authorized Participant")<sup>12</sup>. Each Participant must be a Depository Trust Company participant ("DTC"). It is estimated that the initial net asset value per share for the proposed Index Funds will range from \$20 to \$120. Following issuance, iShares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit Aggregations generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Unit Aggregations on a "cash only" basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit Aggregation from an Index Fund will have to transfer to the Fund a "Portfolio Deposit" consisting of (a) a portfolio of securities that has been selected by Barclays Global Fund Advisors ("Adviser") to correspond generally to the price and yield performance of the relevant Underlying Index ("Deposit Securities"), (b) a cash payment equal per Creation Unit Aggregation to the dividends accrued on the Portfolio Securities of the Index Fund since the last dividend payment on the Portfolio Securities, net of expenses and liabilities (the "Dividend Equivalent Payment"), and (c) an amount equal to the difference between (i) the net asset value ("NAV") per Creation Unit Aggregation of the Index Fund and (ii) the sum of (I) the Dividend Equivalent Payment and (II) the total aggregate market value per Creation Unit Aggregation of the Deposit Securities (the "Balancing Amount,"

MSCI Pacific (Free) Ex Japan Index Fund; and iShares MSCI Israel Index Fund have been added to the Application by amendment. See Amendment No. 1., *supra*, footnote 3.

<sup>12</sup> See Amendment No. 1., *supra*, footnote 3.

and, together with the Dividend Equivalent Payment, the "Cash Component"). The Balancing Amount serves the function of compensating for differences, if any, between the net asset value per Creation Unit Aggregation and the value of the Deposit Amount. The Deposit Amount is the sum of (i) the Dividend Equivalent Payment and (ii) the market value per Creation Unit Aggregation of the Deposit Securities. If the Balancing Amount is a positive number (*i.e.*, the net asset value per Creation Unit Aggregation of the Index Fund exceeds that of the Deposit Amount), the Balancing Amount will be paid to the Fund by the Creator. If the Balancing Amount is a negative number (*i.e.*, the NAV per Creation Unit Aggregation of the Index Fund is less than that of the Deposit Amount) the creator will receive cash in an amount equal to the differential.<sup>13</sup>

On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the Amex, the list of the names and the required number of the shares of each Deposit Security for each Index Fund that offers in-kind purchases of Creation Unit Aggregations. The Portfolio Deposit will be applicable to purchases of Creation Unit Aggregations until a change in the Portfolio Deposit composition is next announced. On a daily basis, the Adviser provides NSCC with the names and required number of shares of the Deposit Securities in a Creation Unit Aggregation, the Balancing Amount and the estimated cash amount. The NSCC, in turn, makes this information available to NSCC members through an electronic file the NSCC members can download. In addition, the Amex will disseminate at regular intervals (every 15 seconds) throughout the trading day, via the facilities of the Consolidated Tape Association ("CTA"), an amount representing on a per iShare basis, the sum of the Cash Component effective through and including the prior business day, plus the current value of the Deposit Securities.

Each Index Fund reserves the right to permit or require the substitution of an amount of cash or the substitution of any security to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to iShares, Inc., or which may be ineligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

It is anticipated that the deposit of Deposit Securities and the Cash

Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Units are separable upon issuance into identical shares which are listed and traded on the Amex. iShares will be traded on the Exchange by professionals as well as institutional and retail investors.

Individual iShares will not be redeemable.<sup>14</sup> iShares will only be redeemable in Creation Unit Aggregations through each Index Fund. To redeem, an investor will have to accumulate enough iShares to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive (a) a portfolio of Portfolio Securities in effect on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Unit Aggregations, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Component, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities. To the extent that the Redemption 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 Redemption Securities and the NAV of the iShares being redeemed.<sup>15</sup> An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as where a redeeming entity is restrained by regulation or policy from transacting in the Redemption Security. An Index Fund may redeem Creation Unit Aggregations in cash in limited circumstances, such as when it is impossible to effect deliveries of Redemption Securities in the applicable jurisdiction.<sup>16</sup>

<sup>14</sup> See Amendment No. 2., *supra*, footnote 4.

<sup>15</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, October 25, 2001.

<sup>16</sup> For example, local restrictions on transfers of securities to and between certain types of investors exist in Korea, Malaysia, Taiwan and Brazil. These restrictions currently preclude "in kind" creations and redemptions of Creation Units of iShares MSCI Korea, Malaysia, Taiwan and Brazil Index Funds. (See SR-Amex-98-49). Accordingly, creations and redemptions of Creation Units of other iShares MSCI Index Funds that hold shares of Korean, Malaysian, Taiwanese and Brazilian companies *i.e.*, iShares MSCI Emerging Markets Latin America; iShares MSCI All Country Far East (Free) Ex Japan; iShares MSCI Emerging Markets (Free); iShares

An Index Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net of expenses and liabilities for such period. The final dividend amount for each Fund, which is made available on amextrader.com, is the amount of dividends to be paid by a Fund for the appropriate period (usually annually). The final dividend amount is also disseminated by the Funds to Bloomberg and other sources. iShares, Inc. 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.<sup>17</sup>

The net asset value for each Index Fund is calculated by the Fund's Administrator (PFPC Inc.). After calculation, such net asset values are available to the public from the Fund's Distributor via a toll free telephone number, and are also available to NSCC participants through data made available from NSCC.

Fund shares are registered in book entry form through The Depository Trust Company and the Index Funds will not issue individual share certificates. DTC or its nominee will be the record or registered owner of all outstanding iShares. Beneficial

MSCI Pacific (Free) Ex Japan; and iShares MSCI All Country World Ex USA) will involve a combination of "for cash" and "in kind" transfers. In such cases, the Fund will charge creation and redemption fees intended to offset the transfer and other transaction costs incurred by the Fund, including market impact expenses (primarily associated with creations and redemptions for cash), related to investing in or disposing of the basket of stocks held by the Fund. The Exchange will disclose this information in the Information Circular sent to members and member organizations about the Funds. The Exchange further notes that the Fund prospectus will disclose: (1) The time that the NAV for each fund is calculated; (2) the possible market impact of a Fund buying or selling securities in Brazil, South Korea, Malaysia and Taiwan prior to calculation of the NAV, and (3) the creation and redemption fees for the Fund. The Exchange will also disclose in the Information Circular issued to members and member organizations in connection with start-up of trading in the Funds. See Amendment No. 3, *supra*, footnote 5. It is expected that continuous sales and redemptions of Funds that hold shares of Korean, Malaysian, Taiwanese and Brazilian companies will result in their trading close to net asset values. These Funds should ordinarily be able to buy and sell Creation Unit Aggregations shortly after receipt of an order (ordinarily on the business day after receipt of an order). See Amendment No. 2, *supra*, footnote 4.

<sup>17</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

<sup>13</sup> See Amendment No. 4., *supra*, footnote 6.

ownership of iShares will be shown on the records of DTC or DTC participants.<sup>18</sup> Trading in shares of iShares MSCI Index Funds on the Exchange is effected until 4 p.m. (New York Time) each business day. The minimum trading increment for such shares is \$.01.

**MSCI Indices.** Each MSCI Index on which a Fund is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information. The information includes an Index description, Index capitalization and concentration, size range of Index companies, Index characteristics, industry group weightings, country weightings and top ten companies and their weightings.

**iShares MSCI Index Funds.** As noted in the iShares MSCI Index Fund prospectus (Registration No. 33-97598), the investment objective of each Fund is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each Fund utilizes a "passive" or indexing investment approach (a "representative sampling" strategy) which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Fund has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate the performance of the benchmark MSCI Index taken in its entirety. Each Fund will maintain regulated investment company compliance.<sup>19</sup>

<sup>18</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

<sup>19</sup> In order 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 such other securities limited for purpose of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the 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 total assets

Each Fund will normally invest at least 95% of its total assets in component securities that are represented in the underlying index, and will at all times invest at least 90% of its total assets in such stocks, except that in order to permit the Adviser additional flexibility to comply with the requirements of the Internal Revenue Code and other regulatory requirements and to manage future corporate actions and index changes in the smaller markets, certain Funds, identified in each Fund's prospectus, will at all times invest at least 80% of their assets in such stocks and at least half of the remaining 20% in such stocks or in stocks included in the relevant market, but not in the relevant underlying index. iShares, Inc. expects that the iShares MSCI Emerging Markets (Free), Emerging Markets Latin America and Israel Index Funds will be subject to the "80%/20%" exception described above. Each Fund may invest its remaining assets in money market instruments (subject to applicable limitations under the 1940 Act), in repurchase agreements, in stocks that are in the relevant market but not in the relevant underlying index, and/or in combinations of certain stock index futures contracts, options on futures contracts, stock index options, stock index swaps, cash, local currency and forward currency exchange contracts that are intended to provide a Fund with exposure to a stock. The Adviser may attempt to reduce tracking error by using futures contracts whose behavior is expected to represent the market performance of the Fund's underlying securities. A Fund will not use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes.

As noted in the iShares MSCI Index Fund prospectus, the Exchange expects that, over time, the "expected tracking error" of an Index Fund relative to the performance of the relevant MSCI Index will be less than 5%. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for the Index Fund (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI Index after one year without rebalancing the portfolio composition. While no particular level

may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within 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 of related trades or business (other than U.S. government securities or the securities of other regulated investment companies).

of tracking error is assured, the Adviser monitors the tracking error of each Fund on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking error over the previous six month periods, and in the event that tracking error exceeds 5%, the Adviser will notify the Fund's Board of Directors and the Board will consider what action might be appropriate.

The Index Funds do not intend to concentrate in any particular industry, except that each Fund will attempt to concentrate its investment (*i.e.*, hold generally 25% or more of its total assets in the stocks of a particular industry or group of industries)<sup>20</sup> to approximately the same extent that its underlying index concentrates in the stocks of such particular industry or group of industries.<sup>21</sup> For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Exchange believes that these requirements and policies prevent any Index Fund from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in an Index Fund could become a surrogate for trading in unregistered securities.

The Funds have chosen to pursue a representative sampling strategy which, by its very nature, entails some risk of tracking error. (It should also be noted that fund expenses, the timing of cash flows, and other factors all contribute to tracking error.) With this in mind, the Adviser seeks to minimize tracking error consistent with the Fund's decision to use a representative sampling strategy. The website for the Funds, [www.ishares.com](http://www.ishares.com), contains detailed information on the performance and the tracking error for each Fund. Consistent with the current practice of other index funds, the Funds' annual and semi-annual report will not contain any specific item designated "tracking error." The annual and semi-annual report will contain all total return

<sup>20</sup> 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. See *supra*, footnote 19.

<sup>21</sup> For the iShares MSCI Israel Index Fund, the MSCI Index seeks to reflect at least 60% of Israel's stock market capitalization.

performance information required by the Investment Company Act of 1940, Form N-1A and the standard conditions for the 1940 Act exemptive relief which we expect to be granted to the Funds. This information includes disclosure of the Funds' total return and each underlying index's total return for 1, 5 and 10 year periods, and line graphs comparing values of hypothetical \$10,000 investments in the Fund and its Underlying index.

MSCI has implemented procedures to prevent the misuse of material non-public information regarding changes to the MSCI indexes underlying the Index Funds. These procedures, which will also apply to the MSCI indexes that are the subject of this filing, were submitted to the Commission by MSCI in connection with approval of additional series of World Equity Benchmark Shares (the previous name for iShares MSCI Index Funds).<sup>22</sup>

*Dissemination of Index Information.* The daily closing index value and the percentage change in the daily closing index value for every MSCI country and regional index is publicly available on the MSCI Web site at [www.ms\\_cidata.com](http://www.ms_cidata.com). In addition, MSCI advises that various news publications (e.g., Barron's, Business Week, Forbes, Global Finance, Investor's Daily, The New York Times and The Wall Street Journal in the United States) publish data for certain MSCI Indices. For example, The Wall Street Journal recently has been publishing the closing index value, for MSCI Indices covering the United States, the United Kingdom, Canada, Japan, France, Germany, Hong Kong, Switzerland, Australia, the World and EAFE (i.e., European, Australian and Far Eastern markets).

Data regarding each MSCI Index is available to MSCI subscribers through various methods of delivery. MSCI index data may be delivered to subscribers directly from MSCI on a daily or monthly basis via electronic delivery methods. MSCI subscribers also may receive index data on a daily, monthly, or quarterly basis in print format via express mail. Several independent data vendors package and disseminate MSCI data in various value-added formats (including vendors displaying both securities and index levels, such as FAME, FactSet, Datastream, RIMES, DSC Data Services and QUANTEC, and vendors displaying index levels only, such as Bloomberg, Bridge/Knight Ridder, Dow Jones Markets, DRI/McGraw Hill, Lipper

Analytical, Quick, Quotron, Reuters and Telekurs). According to the iShares, Inc., compared to the MSCI data available free of charge from the MSCI website, the data available to users subscribing to quote vendors such as Bloomberg, Bridge and Reuters includes more frequent calculation and dissemination of index levels, including "real-time" feeds for certain indices, while the data available to MSCI paid subscribers (either directly from MSCI or from an independent "full data" vendor) includes more detailed information in respect of the securities included in a given index and/or more frequent calculations and dissemination of index levels and securities levels.

*Availability of Information Regarding iShares.* The Web site for iShares, Inc., which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Index Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

According to MSCI, the value of each Index Fund's underlying MSCI Index will be updated intra-day on a real time basis as individual component securities of that Index change in price. The intra-day values of these MSCI Indices will be disseminated every 15 seconds<sup>23</sup> throughout the trading day by organizations authorized by MSCI. In addition, these organizations will disseminate values for each Index once each trading day, based on closing prices in the relevant exchange market.

The NAV for each Index Fund will be calculated and disseminated daily. The NAV for the iShares MSCI Pacific (Free) Ex Japan Index Fund will be determined as of 8:30 a.m. Eastern Time. The time for NAV determination for the other Index Funds that are the subject of this filing will be established by iShares, Inc. prior to start-up of trading and will be publicly disclosed by the Funds. The Amex also intends disseminate for each Index Fund on a daily basis by means of CTA and CQ High Speed Lines information with respect to the Indicative Optimized Portfolio Value (as discussed below) and shares outstanding, prior to the opening of the Amex.<sup>24</sup> The Exchange will also disseminate the NAV and final dividend amounts to be paid for each Fund on the

Web site [amextrader.com](http://amextrader.com). The closing prices of the Index Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, 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.

With each distribution, iShares, Inc. will furnish to the DTC Participants for distribution to Beneficial Owners of iShares of each Index Fund through the DTC Participants a statement setting forth the amount being distributed, expressed as a dollar amount per iShare of such Index Fund. Beneficial Owners also will receive annually notification as to the tax status of the distributions of iShares, Inc.

Promptly after the end of each fiscal year, iShares, Inc. will furnish to the DTC Participants, for distribution to each person who was a Beneficial Owner of iShares at the end of the fiscal year, an annual report of iShares, Inc. containing financial statements audited by independent accountants of nationally recognized standing and such other information may be required by applicable laws, rules and regulations.

*Dissemination of Indicative Optimized Portfolio Value.* As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund causes to be made available on a daily basis the names and required number of shares of each of the securities to be deposited in connection with the issuance of Fund shares in Creation Unit size aggregations for each Fund, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such Funds. This information is made available by the Fund's Adviser to any NSCC participants requesting such information. In addition, other investors can request such information directly from the Fund's Distributor. The net asset value for each Fund is calculated daily by the Fund's Administrator (PFPC Inc.).

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares MSCI Index Fund shares, the Exchange disseminates through the facilities of CTA an updated "indicative optimized portfolio value" ("Value") for each of the Funds currently traded as

<sup>22</sup> Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (Order Approving File No. SR-Amex-98-49).

<sup>23</sup> See Amendment No. 4, *supra*, footnote 6.

<sup>24</sup> See Amendment No. 3, *supra*, footnote 5.

calculated by Bloomberg, L.P. The Exchange will also disseminate a Value for the proposed seven new Funds over CTA facilities (Network B) as calculated by a securities information provider ("Value Calculator"). The methodology utilized in connection with the iShares MSCI Index Funds currently traded will also be utilized for the proposed seven new Funds. The Value is disseminated on a per Fund share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. New York time. The equity securities values included in the Value are the values of the designated portfolio of equity securities ("Deposit Securities") constituting an optimized representation of the benchmark MSCI foreign index for each Fund, which is the same as the portfolio that is to be utilized generally in connection with creations and redemptions of Fund shares in Creation Unit size aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the optimized portfolio for the particular Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currencies.

The Value does *not* reflect the value of *all* securities included in the applicable benchmark MSCI index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each Fund at a particular point in time. Therefore, the Value on a per Fund share basis disseminated during Amex trading hours should not be viewed as a real time update of the net asset value of the Fund, which is calculated only once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very close to the most recently calculated Fund net asset value on a per Fund share basis<sup>25</sup>, it is possible that the value of the portfolio of securities held by the Fund for a particular 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. Following calculation of net asset value by the Fund's

Administrator, the Value on a per Fund share basis can be expected to be the same as the net asset value of the Fund on a per Fund share basis.

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 circumstances (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Adviser). 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 than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

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

- MSCI All Country Far East Free Ex Japan Index; MSCI Pacific (Free) Ex Japan

For these Indexes there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for these Funds, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the Funds portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable estimated cash component for the Fund.

- MSCI Emerging Markets Latin America Index; MSCI All Country World Ex USA Index; MSCI Emerging Markets Free Index; MSCI Europe Index; MSCI Israel Index

For the above noted MSCI Indexes, which include companies trading in markets with trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the principal foreign market, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market is closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The Value will also include the applicable

estimated cash component for each Fund.

*Criteria for Initial and Continued Listing.* The Index Funds are subject to the criteria for initial and continued listing of Index Fund Shares in rule 1002A. For each of the Funds, it is anticipated that a minimum of two Creation Units will be required to be outstanding at the start of the trading. The minimum number of shares of each Fund required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depository Receipts and Index Fund Shares. The Exchange believes that the anticipated minimum number of iShares outstanding for each Fund at the start of trading is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield of a specified MSCI Index.

*Original and Annual Listing Fees.* The Amex original listing fee applicable to the listing of iShares MSCI Index Funds is \$5,000 per Fund (i.e., \$35,000 for the seven Funds listed above). 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 shares in all iShares MSCI Index Funds listed on the Amex, including existing Funds and the seven additional Funds proposed herein.

*Stop and Stop Limit Orders.* Amex rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including iShares MSCI Index Funds, as eligible for this treatment<sup>26</sup>

*Rule 190.* Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares MSCI Index Funds. Commentary .04 states that nothing in rule 190(a) should be construed to restrict a specialist registered in security issued by an investment company from purchasing and redeeming the listing security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the

<sup>25</sup> A slight difference between the Value disseminated at 9:30 a.m. and the most recently calculated Fund net asset value can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going "ex-dividend" on that day.

<sup>26</sup> See Securities Exchange Act Release No. 29063 (April 10, 1998), 56 FR 15652 (April 17, 2001) (Order Approving File No. SR-Amex-90-31), and *supra*, footnote 9.

maintenance of a fair and orderly market.

**Prospects Delivery.** The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of prospectus or product description delivery requirements applicable to iShares MSCI Index Funds. iShares, Inc. has on file with the Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act. Any product description used in reliance on an section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

**Purchase and Redemptions in Creation Unit Size.** In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit size aggregations or multiples thereof.

**Trading Halts.** In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in 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; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex rule 918C). In addition, trading in iShares will be halted if the circuit breaker parameters under Amex rule 117 have been reached.

**Suitability.** The Information Circular referenced above will inform members and member organizations of the characteristics of the specific Index Fund and of applicable Exchange rules, as well as of the requirements of Amex rule 411 (Duty to Know and Approve Customers). The Information Circular will also disclose the time that the NAV is determined for a particular Fund and will disclose that for Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies that the Fund will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemptions, (as discussed in footnote 16 above).

**Surveillance.** Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

## (2) Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objection 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 proposed rule change will impose no 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. Solitation 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 the 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 file number SR-Amex-2001-45 and should be submitted by November 23, 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).<sup>27</sup> Specifically, the Commission finds that the proposal to list and trade the proposed iShares will provide investors with a convenient and less expensive way of 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.<sup>28</sup> 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 the public interest, consistent with section 6(b)(5) of the Act.<sup>29</sup>

<sup>27</sup> 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).

<sup>28</sup> The Commission notes that unlike typical 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.

<sup>29</sup> 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



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: 15 series of iShares Trust;<sup>30</sup> 23 series of iShare MSCI Index Funds (formerly MSCI World Equity Benchmark Shares ("WEBS"));<sup>31</sup> series of the iShares Trust based on the S&P Europe 350 Index and the S&P/TSE 60 Index;<sup>32</sup> nine series of Select Sector SPDRs and one series of the Technology 100 Index Fund;<sup>33</sup> and shares of the street Tracks Dow Jones Global Titans Index Fund.<sup>34</sup>

Similar to these Index Fund 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 an interest in a portfolio of securities designed to reflect substantially the applicable Underlying Index. The estimated cost of individual iShares, approximately \$20 to \$120, 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.<sup>35</sup> Accordingly, the 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 comprising the MSCI All Country World Ex USA Index;<sup>36</sup> (2) the component securities comprising the MSCI All Country Far East (Free) Ex Japan Index;<sup>37</sup> (3) the component securities comprising the MSCI Emerging Markets (Free) Index;<sup>38</sup> (4) the component securities comprising the MSCI Emerging Markets Latin America

Index;<sup>39</sup> (5) the component securities comprising the MSCI Europe Index;<sup>40</sup> (6) the component securities comprising the MSCI Pacific (Free) Ex Japan Index;<sup>41</sup> and (7) the component securities of the MSCI Israel Index.<sup>42</sup>

The Commission notes that each Fund will normally invest at least 95% of its total assets in component securities that are represented in the underlying index, and will at all times invest at least 90% of its total assets in such stocks, except that in order to permit the Adviser additional flexibility to comply with the requirements of the Internal Revenue Code and other regulatory requirements and to manage future corporate actions and index changes in the smaller markets, certain Funds, identified in each Fund's prospectus, will at all times invest at least 80% of its assets in such stocks and at least half of the remaining 20% in such stocks or in stocks included in the relevant market, but not in the relevant underlying index. iShares, Inc. expects that the iShares MSCI Emerging Markets (Free), Emerging Markets Latin America and Israel Index Funds will be subject to the "80%/20%" exception described above. Each Fund may invest its remaining assets in money market instruments (subject to applicable limitations under the 1940 Act), in repurchase agreements, in stocks that are in the relevant market but not in the relevant underlying index, and/or in combinations of certain stock index futures contracts, options on futures contracts, stock index options, stock index swaps, cash, local currency and forward currency exchange contracts that are intended to provide a Fund

integrity of the markets, and other valid regulatory concerns.

<sup>30</sup> Securities Exchange Act Release No. 4470 (August 14, 2001), 66 FR 43927 (August 21, 2001) (order approving File No. SR-Amex-2001-34).

<sup>31</sup> 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); 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).

<sup>32</sup> See Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (order approving File No. SR-Amex-99-49).

<sup>33</sup> See Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (order approving File No. SR-Amex-98-29).

<sup>34</sup> See Securities Exchange Act Release No. 433338 (September 25, 2000) 65 FR 59235 (October 4, 2000) (order approving File No. SR-Amex-00-53).

<sup>35</sup> 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.

<sup>36</sup> The MSCI All Country World Ex USA Index, is comprised of securities trading on the exchanges of 49 of the 51 countries for which MSCI has indices. The index represents world stock markets (not including markets in the United States). The index included 1849 constituent companies as of May 31, 2001.

<sup>37</sup> The MSCI All Country Far East (Free) Ex Japan Index comprises 9 of the 51 countries for which MSCI has indices. The index represents Asian stock markets (not including markets in Japan). The index included 407 constituent countries as of May 31, 2001. Approximately 45% of the index is comprised of securities traded on the combined markets in Korea, Malaysia, and Taiwan. Those countries have restrictions that preclude in-kind redemptions and creations. Therefore, the MSCI Pacific (Free) Ex Japan Index Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in those countries.

<sup>38</sup> The MSCI Emerging Markets (Free) Index comprises 25 of the 51 countries for which MSCI has indices. The index included 696 constituent companies as of May 31, 2001. Approximately 40% of the index is comprised of securities trading in Brazil, Korea, Malaysia, and Taiwan. Those countries have restrictions that preclude in-kind redemptions and creations. Therefore, the Emerging Markets (Free) Index Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in those countries.

<sup>39</sup> The Emerging Markets Latin America Index comprises 7 of the 51 countries for which MSCI has indices. The index included 127 constituent companies as of May 31, 2001. Approximately 40% of the index is comprised of securities trading in Brazil, which has restrictions that preclude in-kind redemptions and creations. Therefore, the Emerging Markets Latin America Fund will charge fees to offset related transfer and transaction costs. Those costs include market impact costs because there is a possibility, which the Exchange will disclose in its prospectus, of market impact as a result of the Fund buying or selling securities in Brazil.

<sup>40</sup> The MSCI Europe Index comprises 7 of the 51 countries for which MSCI has indices. According to MSCI, the index included 127 constituent companies as of May 31, 2001.

<sup>41</sup> The MSCI Pacific (Free) Ex Japan Index represents markets in Australia, Hong Kong, New Zealand and Singapore. There were 151 constituent companies included in the index as of May 31, 2001.

<sup>42</sup> The MSCI Israel Index includes country constituents that are classified using the Global Industry Classification Standard (GICS), which has 10 sectors drawn from 23 Industry groups. Over 70% of the index is comprised of securities in three industry groups: Software & Services; Pharmaceuticals & Biotechnology; and Banks. There were 33 constituent companies as of May 31, 2001.



with exposure to a stock. The Adviser may attempt to reduce tracking error by using futures contracts whose behavior is expected to represent the market performance of the Fund's underlying securities. A Fund will not use these instruments to leverage, or borrow against, its securities holdings or for speculative purposes. The Exchange expects that each Fund does not intend to concentrate in any particular industry except to the extent that its Underlying Index concentrates in the stocks of a particular industry or industries.<sup>43</sup> 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. 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. Although a representative sampling strategy entails some risk of tracking error, the Advisor will seek to minimize tracking error. 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.<sup>44</sup> The Commission notes that the Exchange will disseminate the NAV and final dividend amounts to be paid for each Fund on the website [amextrader.com](http://amextrader.com).<sup>45</sup> In addition, the Funds' annual and semiannual reports will include disclosures 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.<sup>46</sup> While the Commission believes that the proposed requirements for the Funds, and the expected tracking error of 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.<sup>47</sup>

#### B. Disclosure

The Commission believes that the proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading iShares. Investors purchasing the proposed iShares will be required to receive either a prospectus or, as discussed below, a product description of the iShares.<sup>48</sup> 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. 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 characteristics of the specific Index Fund and of applicable Exchange rules, as well as the requirements of Amex rule 411. Amex rule 411 generally requires that member use due diligence to learn the essential facts relative to

every customer, every order or account accepted.<sup>49</sup>

The Information Circular will also disclose the time that the NAV is determined for a particular Fund and will disclose that for Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies that the Fund will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemption. It will also inform members and member organizations, prior to commencement of trading, of prospectus or product description delivery requirements applicable to iShares MSCI Index Funds.

#### C. Listing and Trading of iShares

The Commission finds that adequate rules and procedure 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,<sup>50</sup> including, among others, rules governing trading halts,<sup>51</sup> responsibilities of the specialist, account opening and customer suitability 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,<sup>52</sup> 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 de listing 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

<sup>49</sup> See Amex Rule 411.

<sup>50</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Steven Johnston, Special Counsel, Division, Commission, October 25, 2001.

<sup>51</sup> In addition to other factors that may be relevant, the Amex may consider factors such as those set forth in Amex Rule 918(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.

<sup>52</sup> See 1996 Order.

<sup>43</sup> See Amendment No. 1, *supra*, footnote 3; Amendment No. 2, *supra*, footnote 4.

<sup>44</sup> See Amendment No. 1, *supra*, footnote 3.

<sup>45</sup> See Amendment No. 1, *supra*, footnote 3.

<sup>46</sup> See Amendment No. 1, *supra*, footnote 3.

<sup>47</sup> 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.

<sup>48</sup> As noted above, iShares, Inc. has requested an exemptive order granting relief from the prospectus delivery requirements imposed by section 24(d) of the 1940 Act.

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) to 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 \$.01 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 Funds prospectus and statement of additional information ("SAI"), the Commission believes that concerns regarding potential abuse are minimized.<sup>53</sup> The Amex's existing surveillance procedure 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 Limited 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 or 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.<sup>54</sup>

#### *F. Surveillance*

The Amex represents that the Exchange surveillance procedures applicable to trading in the proposed iShares MSCI Index Funds are the same as those applicable to iShares currently trading on the Exchange.

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.

#### *G. Use of Non-Public Information*

The Commission notes that when a broker-dealer's affiliate, such as MSCI, is involved in the development 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 MSCI indexes underlying the Index Funds. The Commission believes,<sup>55</sup> 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 represents that Indicative Portfolio Value will be disseminated through the facilities of the CTA every 15 seconds from 9:30 a.m. to 4 p.m. Eastern time. 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 daily index value and the percentage change in the daily closing index value for every MSCI country and regional index will be publicly available on the MSCI website at [www.msccdata.com](http://www.msccdata.com). In addition the website for the Funds, [222.ishares.com](http://222.ishares.com), contains detailed information on the performance of each Fund, and the tracking error for each fund.

The NAV for each Index Fund will be calculated and disseminated daily. The NAV for the iShares MSCI Pacific (Free) Ex Japan Index Fund will be determined as of 8:30 a.m. Eastern Time; the time for NAV determination for the other Index Funds that are the subject of this filing will be established by iShares, Inc. prior to start-up of trading and will be publicly disclosed by the Funds. 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.<sup>56</sup>

The Amex also will disseminate for each Index Fund on a daily basis by means of CTA and CQ High Speed Lines information with respect to the Indicative Optimized Portfolio Value (as discussed below) and shares

<sup>53</sup> Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Division, Amex and Florence E. Harmon, Senior Special Counsel, Division, Commission, October 25, 2001.

<sup>54</sup> See generally Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1999) (order approving File No. SR-Amex-90-31) (relating to stop and stop limit orders in certain equity securities).

<sup>55</sup> See Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (order approving File No. SR-Amex-98-49)

<sup>56</sup> See Amendment No. 1, *supra*, footnote 3.

outstanding, prior to the opening of the Amex. The Exchange will also disseminate the NAV and final dividend amounts to be paid for each Fund on amextrader.com.

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 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.<sup>57</sup>

#### *I. Scope of the Commission's Order*

The Commission is approving the 7 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 of 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 strengthens the Amex's proposal by, among other things, stating that the Exchange will disclose, in an Information Circular that Funds holding shares of Korean, Malaysian, Taiwanese and Brazilian companies will charge creation and redemption fees intended to offset brokerage costs associated with cash creations and redemptions; and

representing that MSCI has implemented procedures to prevent the misuse of material non-public information regarding MSCI indices. Amendment No. 2 clarifies the proposal by, among other things, noting that Fund Participants are limited to DTC Participants and clarifying the level of the Funds' investment in their Underlying Indices. Amendment No. 2 further clarified the proposal explaining that fees assessed in connection with Funds trading in countries where in-kind purchases of securities are precluded, are assessed in part to cover market impact costs. Amendment No. 4 also strengthened the proposal by requiring, among other things, that the Fund prospectus will disclose the possible market impact of a Fund buying or selling securities in those countries prior to calculation of the NAV. Amendment No. 4 clarified the proposal by, among other things, further delineating the level of the Funds investment in their Underlying Indices. Accordingly, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,<sup>58</sup> 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-2001-45), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>59</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-27524 Filed 11-1-01; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44994; File No. SR-CBOE-2001-22]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Permanent Approval of the Pilot Program To Eliminate Position and Exercise Limits for OEX, SPX, and DJX Index Options and Flex Options on These Indexes**

October 26, 2001.

#### **I. Introduction**

On May 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking permanent approval of the pilot program eliminating position and exercise limits for S&P 500 Index ("SPX"), S&P 100 Index ("OEX"), and Dow Jones Industrial Average ("DJX") as well as for FLEX options overlying these indexes.

The proposed rule change was published for comment in the **Federal Register** on June 25, 2001.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

#### **II. Description of Proposal**

On January 22, 1999, the Commission approved a two-year pilot program ("Pilot Program") that allowed for the elimination of position and exercise limits for options on the OEX, SPX, DJX index options as well as for FLEX options overlying these indexes.<sup>4</sup> On January 22, 2001, the Commission extended the Pilot Program until May 22, 2001.<sup>5</sup> On May 22, 2001, the Commission again extended the Pilot Program until September 22, 2001.<sup>6</sup> On September 24, 2001, the Commission extended the pilot program until March 24, 2002.<sup>7</sup> The Exchange now seeks

<sup>1</sup> 15 U.S.C. 78(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 42862 (May 30, 2000), 65 FR 36481.

<sup>4</sup> See Securities Exchange Act Release No. 40969, 64 FR 49111 (Feb. 1, 1999) (approving SR-CBOE-98-23) ("Pilot Approval Order").

<sup>5</sup> See Securities Exchange Act Release No. 43867, 66 FR 8250 (January 30, 2001).

<sup>6</sup> See Securities Exchange Act Release No. 44335, 66 FR 33728 (May 25, 2001).

<sup>7</sup> See Securities Exchange Act Release No. 44837, 66 FR 49988 (October 1, 2001).

<sup>57</sup> See Amendment No. 4, *supra*, footnote 6.

<sup>58</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>59</sup> 17 CFR 200.30-3(a)(12).