

the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: David\_Rostker@omb.eop.gov; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 6, 2006.

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53230; File No. PCX-2005-116]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To List and Trade Shares of the iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund, iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund

February 6, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The PCX filed Amendment No. 1 to the proposed rule change on December 13, 2005.<sup>3</sup> The PCX filed Amendment No. 2 to the proposed rule change on December 14, 2005.<sup>4</sup> The PCX filed Amendment No. 3 to the proposed rule

change on January 24, 2006.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is 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 Exchange, through its wholly-owned subsidiary, PCXE, proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, to list and trade the following iShares®<sup>6</sup> MSCI<sup>SM</sup> 7 Series Index Funds, which are Investment Company Units ("ICUs"), governed by PCXE Rule 5.2(j)(3): iShares MSCI Australia Index Fund, iShares MSCI Austria Index Fund, iShares MSCI Canada Index Fund, iShares MSCI EMU Index Fund,<sup>8</sup> iShares MSCI Germany Index Fund, and iShares MSCI Mexico Index Fund (the "Funds").

#### 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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and 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

The Exchange has adopted listing standards applicable to ICUs, which are consistent with the listing criteria currently used by the American Stock Exchange ("Amex") and other exchanges.<sup>9</sup> The Exchange now

proposes to list and trade on the basis more fully set forth herein shares of the Funds, which are ICUs,<sup>10</sup> governed by PCXE Rule 5.2(j)(3).

###### a. Description of the Funds

The Funds are currently listed and traded on the Amex<sup>11</sup> and trade on other securities exchanges<sup>12</sup> and in the over-the-counter market. The information below describes how the Funds were created and are traded.<sup>13</sup>

The shares of the Funds are issued by iShares, Inc. iShares, Inc. is an open-ended management investment company. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the applicable underlying index. The Funds utilize representative sampling to invest in a representative sample of securities in the applicable underlying index. Barclays Global Fund Advisors ("BGFA"), a subsidiary of Barclays Global Investors, N.A. ("BGI"), is the investment adviser for each Fund. BGI is a wholly-owned indirect subsidiary of Barclays Bank PLC of the United Kingdom. BGFA and its affiliates are not affiliated with the index provider, MSCI. Investors Bank and Trust Company ("Investors Bank") serves as administrator, custodian and transfer

related to the listing and trading criteria for ICUs. See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-1998-29). In July 2001, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to unlisted trading privileges ("UTP"), of ICUs under PCX Rule 5.2(j)(3). See Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716-01 (July 19, 2001) (SR-PCX-2001-14).

<sup>10</sup> The definition of an ICU is set forth under PCXE Rule 5.1(b)(15) (noting that an ICU is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity).

<sup>11</sup> The Index Funds were formerly known as World Entity Benchmark Shares or WEBS. The iShares MSCI Australia, Austria, Canada, Germany, and Mexico Index Funds were initially approved for listing and trading on the Amex in 1996. See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR-Amex-95-43). The iShares MSCI EMU Index Fund was initially approved for listing and trading on the Amex in 2000. See Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR-Amex-98-49).

<sup>12</sup> See, e.g., Securities Exchange Act Release No. 50142 (August 3, 2004), 69 FR 48539 (August 10, 2004) (SR-NYSE-2004-27) (approving the UTP trading of certain iShares MSCI Index Funds and the S&P Europe 350 Index Fund).

<sup>13</sup> See iShares, Inc. Prospectus and Statement of Additional Information dated January 1, 2005 (as revised September 23, 2005) and the Web sites of the Amex (<http://www.amex.com>) and iShares (<http://www.iShares.com>). Fund information relating to net asset value ("NAV"), returns, dividends, component stock holdings and the like is updated on a daily basis on the Web sites.

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> Amendment No. 2 made clarifying changes to Amendment No. 1.

<sup>5</sup> Amendment No. 3 made clarifying changes to Amendment No. 1.

<sup>6</sup> iShares is a registered trademark of Barclays Global Investors, N.A.

<sup>7</sup> The MSCI and MSCI indices are registered service marks of Morgan Stanley & Co., Incorporated.

<sup>8</sup> The iShares MSCI EMU Index Fund is based on the MSCI EMU Index, which is currently comprised of companies from eleven of the twelve European Economic and Monetary Union, or "EMU" countries (i.e., all of the EMU countries except Luxembourg), as follows: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Portugal, and Spain.

<sup>9</sup> In October 1999, the Commission approved PCXE Rule 5.2(j)(3), which sets forth the rules

agent for each Fund, and SEI Investments Distribution Co. (the "Distributor") is the principal underwriter and distributor of shares of the Funds. Neither Investors Bank nor the Distributor is affiliated with iShares, Inc., MSCI, or the Exchange.

iShares, Inc. will issue and redeem the shares of the Funds only in aggregations of substantial size, which varies for the various Funds but is at least 50,000 shares (each aggregation of shares is a "Creation Unit"; one or more Creation Units are sometimes referred to as "Creation Unit Aggregations"). As of December 5, 2005, the value of a Creation Unit of each of the Funds is as follows: The iShares MSCI Australia Index Fund—\$3,861,867; the iShares MSCI Austria Index Fund—\$2,710,144; the iShares MSCI Canada Index Fund—\$2,159,521; the iShares MSCI EMU Index Fund—\$3,826,520; the iShares MSCI Germany Index Fund—\$5,920,760; and the iShares MSCI Mexico Index Fund—\$3,582,278. Each Fund issues and sells shares of each Fund only in Creation Units through the Distributor on an ongoing basis at prices based on the next calculation of NAV after an order is received. Creation Unit Aggregations may be purchased only by or through a participant that has entered into an authorized participant agreement with the Distributor ("Authorized Participant"). Each Authorized Participant must be either a member of the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Authorized Participants must place an irrevocable purchase order for Creation Units of each of the Funds before 4 p.m. (ET) on any Business Day<sup>14</sup> to receive that Business Day's NAV.

An Authorized Participant wishing to purchase newly-issued Creation Units from a Fund may do so in exchange for: (i) An in-kind deposit of a portfolio of equity securities constituting an optimized representation of the Fund's underlying index (the "Deposit Securities"), and (ii) a cash component more fully described below (together, the "Portfolio Deposit"). The cash component is an amount equal to the "Dividend Equivalent Payment" (as described below), plus or minus, as the case may be, a "Balancing Amount" (as described below). The "Dividend Equivalent Payment" is an amount equal, on a per Creation Unit basis, to the dividends on all the portfolio securities of the Fund with ex-dividend

dates within the accumulation period for such distribution, net of expenses and liabilities for such period, as if all of the portfolio securities had been held by iShares, Inc. for the entire period. The "Balancing Amount" is an amount equal to the difference between (a) the NAV per Creation Unit of the Fund and (b) the sum of (i) the Dividend Equivalent Payment and (ii) the market value per Creation Unit of the securities deposited with iShares, Inc. (the sum of (i) and (ii) is referred to as the "Deposit Amount"). The Balancing Amount serves the function of compensating for any differences between the NAV per Creation Unit and the value of the Deposit Amount.

Each 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 for other similar reasons.

BGFA makes available through the NSCC daily, prior to the opening of business (currently 9:30 a.m. Eastern time ("ET")),<sup>15</sup> the names and required number of shares of each Deposit Security to be included in the current Portfolio Deposit for each Fund ("New Basket Amount"). It is anticipated that Portfolio Deposits will be made primarily by institutional investors and arbitrageurs. Creation Units are separable upon issuance into identical shares that will be listed and traded on the Exchange by professionals and institutional and retail investors.

Shares of the Funds will only be redeemable in Creation Unit Aggregations through each Fund. To redeem, an investor will have to accumulate enough shares of a Fund to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive Deposit Securities as announced by BGFA on the day of the redemption request, plus cash in an amount equal to the difference between the NAV of the shares being redeemed and the value of the Deposit Securities, less a redemption transaction fee, noted below. With respect to each Fund BGFA makes available through the NSCC prior to 9:30 a.m. (ET) on each business day, the Portfolio Securities that will be applicable (subject to possible

amendment or correction) to redemption requests received in proper form by 4 p.m. (ET) on any business day.<sup>16</sup>

Investors purchasing Creation Unit Aggregations are charged a standard creation transaction fee, regardless of how many Creation Units are purchased on a particular day. The transaction fees are \$2,400 for the iShares MSCI Australia Index Fund, \$600 for the iShares MSCI Austria Index Fund, \$1,900 for the iShares MSCI Canada Index Fund, \$8,000 for the iShares MSCI EMU Index Fund, \$1,500 for the iShares MSCI Germany Index Fund, and \$1,400 for the iShares MSCI Mexico Index Fund. Likewise, investors redeeming Creation Unit Aggregations at NAV are also charged a standard redemption transaction fee, regardless of how many Creation Units are redeemed on a particular day. The redemption transaction fees are the same as the creation transaction fees noted above.

Each Fund makes distributions of dividends from net investment income, including net foreign currency gains, if any, at least annually. The Funds 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.

## b. MSCI Indices

### i. Generally

The MSCI indices are owned and compiled by Morgan Stanley Capital International Inc., a Delaware corporation of which Morgan Stanley is the majority owner, and The Capital Group of Companies, Inc. is the minority shareholder. MSCI is not affiliated with iShares, Inc., BGI, BGFA, Investors Bank, the Distributor, or the Exchange. MSCI and Morgan Stanley do not share any employees that are directly involved in the index compilation. MSCI employees directly involved in the index compilation do not report directly to any Morgan Stanley personnel. MSCI has established policies and procedures for the handling and monitoring the dissemination of confidential, non-public information relating to the MSCI indices. These policies and procedures include specific "firewall" procedures regulating the flow of information between MSCI and Morgan Stanley personnel. BGI and its affiliates have no involvement in selection of component stocks in the underlying indices.

MSCI applies the same criteria and calculation methodology across all

<sup>14</sup> A "Business Day" with respect to each Fund is any day on which ArcaEx is open for business.

<sup>15</sup> Usually, NSCC disseminates the estimated Portfolio Securities and Cash Amount between 6 p.m. and 8 p.m. (ET) on the prior business day for both creation and redemption request placed the following day. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, on February 2, 2006.

<sup>16</sup> *Id.*

markets for all equity indices. The MSCI indices are calculated assuming that dividends (net of taxes) paid by the securities in the index are reinvested in index securities.<sup>17</sup>

## ii. Weighting

The underlying indices for the Funds are market capitalization weighted. All single-country MSCI indices are free-float weighted, *i.e.*, companies are included in the indices at the value of their free public float (free float multiplied by price). MSCI defines “free float” as total shares excluding shares held by strategic investors such as governments, corporations, controlling shareholders and management, and shares subject to foreign ownership restrictions. MSCI’s standard equity indices generally seek to have 85% of the free float-adjusted market capitalization of a country’s stock market reflected in the MSCI index for such country.<sup>18</sup> With respect to the MSCI EMU Index, market capitalization weighting, combined with a consistent target of 85% of free float-adjusted market capitalization, seeks to ensure that each country’s weight in the MSCI EMU Index approximates its weight in the total universe of developing and emerging markets.

## iii. Selection Criteria

MSCI undertakes an index construction process, which involves: (i) Defining the equity universe; (ii) adjusting the total market capitalization of all securities in the universe for free float available to foreign investors; (iii) classifying the universe of securities under the Global Industry Classification Standard (the “GICS”); and (iv) selecting securities for inclusion according to MSCI’s index construction rules and guidelines.

The index construction process starts at the country level, with the identification of all listed securities for that country. MSCI classifies each company and its securities in only one country. This allows securities to be sorted distinctly by their respective countries. In general, companies and their respective securities are classified as belonging to the country in which they are incorporated. All listed equity securities, or listed securities that exhibit characteristics of equity securities, except investment trusts, mutual funds and equity derivatives, are eligible for inclusion in the universe. Shares of non-domiciled companies

generally are not eligible for inclusion in the universe.

## iv. Adjusting Total Market Capitalization for Free Float

After identifying the universe of securities, MSCI calculates the free float-adjusted market capitalization of each security in that universe using publicly available information. The process of free float adjusting market capitalization involves (i) defining and estimating the free float available to foreign investors for each security, using MSCI’s definition of free float, (ii) assigning a free float-adjustment factor to each security, and (iii) calculating the free float-adjusted market capitalization of each security.

## v. GICS Classification

In addition to the free float-adjustment of market capitalization, all securities in the universe are assigned to an industry-based hierarchy that describes their business activities. To this end, MSCI has designed, in conjunction with Standard & Poor’s, the GICS. This comprehensive classification scheme provides a universal approach to industries worldwide and forms the basis for achieving MSCI’s objective of reflecting broad and fair industry representation in its indices.

## vi. Selection of Securities

In an attempt to ensure a broad and fair representation in the indices of the diversity of business activities in the universe, MSCI follows a “bottom-up” approach to index construction, building indices up to the industry group level. The bottom-up approach to index construction requires a thorough analysis and understanding of the characteristics of the universe. This analysis drives the individual security selection decisions, which aim to reflect the overall features of the universe in the country index. MSCI targets an 85% free float-adjusted market representation level within each industry group, within each country.

The security selection process within each industry group is based on the careful analysis of: (i) Each company’s business activities and the diversification that its securities would bring to the index; (ii) the size (based on free float-adjusted market capitalization) and liquidity of securities;<sup>19</sup> and (iii)

the estimated free float for the company and its individual share classes. Only securities of companies with estimated free float greater than 15% are, in general, considered for inclusion. Exceptions to this general rule are made only in significant cases, where not including a security of a large company would compromise the index’s ability to fully and fairly represent the characteristics of the underlying market.

## vii. Free Float

MSCI defines the free float of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. In practice, limitations on free float available to international investors include: (i) Strategic and other shareholdings not considered part of available free float and (ii) limits on share ownership for foreigners.

Under MSCI’s free float-adjustment methodology, a constituent inclusion factor is equal to its estimated free float rounded-up to the closest 5% for constituents with free float equal to or exceeding 15%. For example, a constituent security with a free float of 23.2% will be included in the index at 25% of its market capitalization. For securities with a free float of less than 15% that are included on an exceptional basis, the estimated free float is adjusted to the nearest 1%.

## viii. Changes to the Indices

According to the Registration Statement, the MSCI indices are maintained with the objective of reflecting, on a timely basis, the evolution of the underlying equity markets. In maintaining the MSCI indices, emphasis is also placed on continuity, replicability and minimizing turnover in the indices. Maintaining the MSCI indices involves many aspects, including additions to and deletions from the indices and changes in number of shares and changes in Foreign Inclusion Factors (“FIFs”) as a result of updated free float estimates.

Potential additions are analyzed not only with respect to their industry group, but also with respect to their industry or sub-industry group, in order to represent a wide range of economic and business activities. All additions are considered in the context of MSCI’s methodology, including the index constituent eligibility rules and guidelines.

In assessing deletions, it is important to emphasize that indices must

<sup>17</sup> See the iShares, Inc. Prospectus and Statement of Additional Information dated January 1, 2005 (as revised September 23, 2005).

<sup>18</sup> *Id.*

<sup>19</sup> All else being equal, MSCI targets for inclusion the most sizable and liquid securities in an industry group. In addition, securities that do not meet the minimum size guidelines discussed below and/or securities with inadequate liquidity are not considered for inclusion. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel,

Division, Commission, on January 31, 2006 (correcting typographical error).

represent the full-investment cycle, including bull as well as bear markets. Out-of-favor industries and their securities may exhibit declining prices, declining market capitalization, and/or declining liquidity, and yet are not deleted because they continue to be good representatives of their industry group.

As a general policy, changes in number of shares are coordinated with changes in FIFs to accurately reflect the investability of the underlying securities. In addition, MSCI continuously strives to improve the quality of its free float estimates and the related FIFs. Additional shareholder information may come from better disclosure by companies or more stringent disclosure requirements by a country's authorities. It may also come from MSCI's ongoing examination of new information sources for the purpose of further enhancing free float estimates and better understanding shareholder structures. When MSCI identifies useful additional sources of information, it seeks to incorporate them into its free float analysis.

Overall, index maintenance can be described by three broad categories of implementation of changes: (i) Annual full country index reviews that systematically re-assess the various dimensions of the equity universe for all countries and are conducted on a fixed annual timetable; (ii) quarterly index reviews, aimed at promptly reflecting other significant market events; and (iii) ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices rapidly as they occur.

Potential changes in the status of countries (stand-alone, emerging, developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

The annual full country index review for the MSCI standard country indices is carried out once every 12 months and implemented as of the close of the last business day of May. The implementation of changes resulting from a quarterly index review occurs on only three dates throughout the year, as of the close of the last business day of February, August, and November. Any country indices may be impacted at the quarterly index review. MSCI index additions and deletions due to quarterly index rebalancings are announced at least two weeks in advance. The intra-day values of the underlying indexes are

disseminated every 60 seconds<sup>20</sup> throughout the trading day by organizations authorized by the index providers and are available through major financial information vendors.

#### ix. Recent Data for the MSCI Indices

As of November 30, 2005, the iShares MSCI Australia Index's top three holdings were BHP Billiton Ltd., Commonwealth Bank of Australia, and National Australia Bank Ltd. The Index's top three industries were diversified banks, diversified metals and mining, and real estate investment trusts.<sup>21</sup> The Index components had a total market capitalization of approximately \$521.6 billion. The average total market capitalization was approximately \$6.3 billion. The ten largest constituents represented approximately 51.1% of the Index weight. The five highest weighted stocks, which represented 37.8% of the Index weight, had an average daily trading volume of 7,726,309 shares during the past two months. Each of the component stocks had a daily trading volume of at least 26,690 shares for any given trading day in the six months ended November 30, 2005.<sup>22</sup>

As of November 30, 2005, the iShares MSCI Austria Index's top three holdings were OMV AG, Telekom Austria AG, and Erste Bank Der Oester Spark. The Index's top three industries were integrated oil and gas, integrated telecommunications services, and diversified banks. The Index components had a total market capitalization of approximately \$40.1 billion. The average total market capitalization was approximately \$3.1 billion. The ten largest constituents represented approximately 95.5% of the Index weight. The five highest weighted stocks, which represented 74.2% of the Index weight, had an average daily trading volume of 654,786 shares during the past two months. Each of the

component stocks had a daily trading volume of at least 1,874 shares for any given day in the six months ended November 30, 2005.<sup>23</sup>

As of November 30, 2005, the iShares MSCI Canada Index's top three holdings were Royal Bank of Canada, Manulife Financial Corp., and Encana Corp. The Index's top three industries were diversified banks, oil and gas exploration and production, and life and health insurance. The Index components had a total market capitalization of approximately \$741.3 billion. The average total market capitalization was approximately \$7.9 billion. The ten largest constituents represented approximately 47.7% of the Index weight. The five highest weighted stocks, which represented 26.9% of the Index weight, had an average daily trading volume of 2,101,668 shares during the past two months. Each of the component stocks had a daily trading volume of at least 1,230 shares for any given day in the six months ended November 30, 2005.<sup>24</sup>

As of November 30, 2005, the iShares MSCI EMU Index's top three holdings were Total SA, Sanofi Aventis, and Nokia OYJ. The Index's top three industries were diversified banks, integrated oil and gas, and integrated telecommunications services. The Index components had a total market capitalization of approximately \$3,099.9 billion. The average total market capitalization was approximately \$9.9 billion. The ten largest constituents represented approximately 25.5% of the Index weight. The five highest weighted stocks, which represented 14.5% of the Index weight, had an average daily trading volume of 32,013,459 shares during the past two months. Each of the component stocks had a daily trading volume of at least 398 shares for any given day in the six months ended November 30, 2005.<sup>25</sup>

As of November 30, 2005, the iShares MSCI Germany Index's top three holdings were Siemens AG-REG, E.ON AG, and Allianz AG-REG. The Index's top three industries were automobile manufacturers, diversified chemicals, and industrial conglomerates. The Index components had a total market capitalization of approximately \$663.8 billion. The average total market capitalization was approximately \$13.3 billion. The ten largest constituents represented approximately 67.7% of the Index weight. The five highest weighted stocks, which represented 40.6% of the Index weight, had an average daily

<sup>20</sup> See Amendment No. 3.

<sup>21</sup> Each reference to market capitalization in this section ("Recent Data for the MSCI Indices") is a reference to free-float adjusted market capitalization. According to the Statement of Additional Information for iShares, Inc. dated January 1, 2006, MSCI defines "free float" as total shares excluding shares held by strategic investors such as governments, corporations, controlling shareholders and management, and shares subject to foreign ownership restrictions. MSCI calculates the free float-adjusted market capitalization of each security using publicly available information. The process of free float adjusting market capitalization involves: (i) Defining and estimating the free float available to foreign investors for each security, using MSCI's definition of free float; (ii) assigning a free float-adjustment factor to each security; and (iii) calculating the free float-adjusted market capitalization of each security. See Amendment No. 3.

<sup>22</sup> See Amendment No. 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

trading volume of 4,312,091 shares during the past two months. Each of the component stocks had a daily trading volume of at least 2,847 shares for any given day in the six months ended November 30, 2005.<sup>26</sup>

As of November 30, 2005, the iShares MSCI Mexico Index's top three holdings were America Movil SA DE CV—SER L, Cemex SA—CPO, and Telefonos de Mexico SA—SER L. The Index's top three industries were wireless telecommunication services, construction materials, and integrated telecommunication services. The Index components had a total market capitalization of approximately \$100.7 billion. The average total market capitalization was approximately \$4.6 billion. The ten largest constituents represented approximately 89.2% of the Index weight. The five highest weighted stocks, which represented 75.9% of the Index weight, had an average daily trading volume of 12,691,256 shares during the past two months. Each of the component stocks had a daily trading volume of at least 13 shares for any given day in the six months ended November 30, 2005.<sup>27</sup>

#### x. Prices and Exchange Rates

The prices used to calculate the MSCI indices are the official exchange closing prices or those figures accepted as such. MSCI reserves the right to use an alternative pricing source on any given day.

The MSCI indices are calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets. For exchange rates for the MSCI indices, MSCI uses the FX rates published by WM Reuters at 4 p.m. London time. MSCI uses WM Reuters' rates for all developed and emerging markets. Exchange rates are taken daily at 4 p.m. London time by the WM Reuters and are sourced whenever possible from multi-contributor quotes on Reuters. Representative rates are selected for each currency based on a number of "snapshots" of the latest contributed quotations taken from the Reuters service at short intervals around 4 p.m. WM Reuters provides closing bid and offer rates. MSCI uses these to calculate the mid-point to 5 decimal places.

MSCI continues to monitor exchange rates independently and may, under exceptional circumstances, elect to use an alternative exchange rate if the WM Reuters rate is believed not to be

representative for a given currency on a particular day.<sup>28</sup>

#### c. Funds' Assets and Industry Concentration

The Funds' prospectus states that each Fund will typically invest at least 95% of its assets in the component securities of its underlying index and American Depositary Receipts ("ADRs") based on such component securities. Each of the iShares MSCI Canada, EMU, and Germany Index Funds will invest at all times at least 90% of its assets in the component securities of its underlying index and ADRs based on such component securities. Each of the iShares MSCI Australia, Austria, and Mexico Index Funds will invest at all times at least 80% of its assets in the component securities of its underlying index and ADRs based on such component securities, and at least 90% of its assets in the component securities of its underlying index or in securities included in the relevant market, but not in its underlying index, or in ADRs based on the component securities of the underlying index. Therefore, each of the iShares MSCI Australia, Austria and Mexico Index Funds will invest not more than 10% of fund assets in ADRs and other securities, which are not included in or based on the component securities of its Underlying Index and are also not included in the relevant market.<sup>29</sup>

The NAV for the Funds will be calculated directly by Investors Bank as of the close of regular trading (normally 4 p.m. (ET)), according to the Funds' prospectus. The NAV of each Fund is calculated by dividing the value of the net assets of such Fund (total assets less total liabilities) by the total number of outstanding shares of the Fund. Generally, each Fund's investments are valued using market valuations. If current market valuations are not available or such valuations do not reflect current market values, the affected investments will be valued

<sup>28</sup> If MSCI elects, under exceptional circumstances, to use alternative sources of exchange rates when the WM Reuters rates are not available or MSCI determines that such rates are not reflective of market circumstances for a given currency on a particular day, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act to be submitted to the Commission. The Exchange submits that under exceptional circumstances, it may be appropriate for MSCI to make such an election. However, the Exchange represents that if the use of an alternative exchange rate source is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act. See Amendment No. 3.

<sup>29</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

using fair value pricing. The value of assets denominated in foreign currencies is converted into U.S. dollars using exchange rates selected by BGFA. The NAV will be available to the public on <http://www.iShares.com>, from iShares, Inc. by means of a toll-free number, and to NSCC participants through data made available from the NSCC.

Each of the Funds will not concentrate its investments (*i.e.*, hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that its underlying index concentrates in the stocks of such particular industry or group of industries. As of October 31, 2005, the iShares MSCI Australia Index Fund held 25% or more of its total assets in banks; the iShares MSCI Canada Index Fund held 25% or more of its total assets in energy; and the iShares SCI Mexico Index Fund held 25% or more of its total assets in the telecommunications industry.<sup>30</sup> Each Fund's top portfolio holdings can be found at <http://www.iShares.com>.

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. 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, (a) 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 purposes 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 (b) not more than 25% of the value of its total assets may be invested in the securities of any one issuer or of two or more issuers that are

<sup>30</sup> Industry concentration is a function of the market capitalization of the companies in the particular industry divided by the total market capitalization of the index. The total market capitalization of an index does not determine its industry concentration, nor does the total market capitalization of the index reflect the total market capitalization of the country. Each index uses a bottom-up sampling approach (rules based) to achieve a balance between fair market representation and investability. See Amendment No. 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

controlled by the particular Fund (within the meaning of Section 851(b)(3)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies) or for taxable years beginning after October 24, 2004, the securities of one or more qualified publicly traded partnerships.

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

#### d. Tracking Error

According to the Funds' prospectus, BGFA expects that over time, the correlation between each Fund's performance and that of its underlying index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called "tracking error." A Fund using a representative sampling strategy (which all of the Funds utilize) can be expected to have a greater tracking error than a Fund using a replication strategy. Replication is a strategy in which a Fund invests in substantially all of the securities in its underlying index in approximately the same proportions as in the underlying index.

The Funds have chosen to pursue a representative sampling strategy that, by its very nature, entails some risk of tracking error. Fund expenses, the timing of cash flows, and other factors all contribute to tracking error. The Web site for the Funds, <http://www.iShares.com>, contains detailed information on the performance and the tracking error for each Fund.

#### e. Availability of Information Regarding Funds and Underlying Indexes

There will also be disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and CQ High Speed Lines or major market data vendor, which will be made available prior to the opening of trading on the Exchange. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to 9:30 a.m. (ET). In addition, the Web site for the Funds, <http://www.iShares.com>, which will be publicly accessible at no charge, will contain the following information, on a

per iShare basis, for the Funds: (i) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price")<sup>31</sup> and a calculation of the premium or discount of such price against such NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.<sup>32</sup>

The closing prices of the 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 online 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.<sup>33</sup>

The value of each underlying 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 the indices will be disseminated every 60 seconds throughout the trading day by organizations authorized by the index providers and major financial information vendors when foreign market hours overlap with ArcaEx trading hours from 9:30 a.m. (ET) to 8 p.m. (ET).<sup>34</sup> When the foreign market is closed during the ArcaEx trading hours from 9:30 a.m. (ET) to 8 p.m. (ET), investors may refer to the closing index values provided by MSCI at <http://www.msci.com>. The values of the MSCI Australia Index, the MSCI Canada Index, and the MSCI Germany Index are reported daily in *The Wall Street Journal*.

<sup>31</sup> The Bid-Ask Price of the Funds is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Funds' NAV.

<sup>32</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to additional information disseminated about the Funds).

<sup>33</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to closing price and exchange rate).

<sup>34</sup> The index value may be disseminated through either the Consolidated Tape Association or one or more major market data vendors. PCXE Rule 5.2(j)(3), Commentary .01(b)(3). See Securities Exchange Act Release No. 52806 (November 18, 2005), 70 FR 71358 (November 28, 2005) (SR-PCX 2005-88). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 31, 2006.

To provide current Fund pricing information, the Exchange will disseminate through the facilities of the Consolidated Tape Association or one or more major market data vendors<sup>35</sup> an indicative optimized portfolio value ("IOPV") for the Funds. The IOPV is an amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. Dollars.<sup>36</sup> The IOPV will be calculated by an independent third party, such as Bloomberg, L.P. The IOPV will be disseminated every 15 seconds between 9:30 a.m. and 4:15 p.m. (ET).<sup>37</sup> The IOPV likely will not reflect the value of all securities included in the applicable indices. In addition, the IOPV will not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular moment. In addition, the foreign exchange rate used in computing NAV of a Fund may differ materially from that used by the IOPV calculator. Thus, the IOPV should not be viewed as a real-time update of the NAV of the Funds, which is calculated only once a day. It is expected, however, that during the trading day the IOPV will closely approximate the value per share of the portfolio of securities for the Funds except under unusual circumstances.

For the iShares MSCI Australia Index Fund, there is no overlap in trading

<sup>35</sup> The IOPV may be disseminated through either the Consolidated Tape Association or one or more major market data vendors pursuant to PCXE Rule 5.2(c). See Securities Exchange Act Release No. 52809 (November 18, 2005), 70 FR 71590 (November 29, 2005) (SR-PCX-2005-108). Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on January 31, 2006.

<sup>36</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006 (as to description of IOPV).

<sup>37</sup> The Commission expects any exchange listing and trading shares of exchange traded funds ("ETFs") or similar products to do so only when the underlying index value and IOPV is updated and disseminated on a real time basis. For these products, however, the Commission has permitted index dissemination every 60 seconds when the applicable foreign market is open, which would be applicable to ArcaEx's after-hours trading sessions. However, since NSCC does not disseminate the New Basket Amount until approximately 6 p.m. to 8 p.m., an updated IOPV after the 4 p.m. NAV determination is not possible during ArcaEx's late trading session from 4 p.m. to 8 p.m. Accordingly, the Commission will permit ArcaEx to trade these ETFs without dissemination of the IOPV in its late trading session. However, to trade in all other ArcaEx trading sessions, an IOPV must be disseminated at least every 15 seconds. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

hours between the foreign and U.S. markets. Therefore, for this Fund, the IOPV calculator will utilize closing prices (denominated in the foreign currency) in the principal foreign market for securities in the Fund's portfolio and convert the price to U.S. dollars.<sup>38</sup> This IOPV will be updated every 15 seconds from 9:30 a.m. to 4:15 p.m. (ET) to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

For the iShares MSCI Austria, Canada, EMU, Germany, and Mexico Index Funds, there is an overlap in trading hours between the foreign and U.S. markets. Therefore, during any overlap period that occurs between 9:30 a.m. and 4:15 p.m. (ET), the IOPV calculator will update the applicable IOPV every 15 seconds to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed between 9:30 a.m. and 4:15 p.m. (ET), the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes.

For each Fund, in addition to having an equity securities value component, the IOPV will also include the applicable cash component consisting of estimated accrued dividend and other income, less expenses. The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with trading shares of the Funds on the Exchange or the creation or redemption of Fund shares.<sup>39</sup>

#### f. Information Circular

In connection with the trading of the Funds, the PCX intends to inform its equity trading permit holders ("ETP Holders") in an Information Circular of the special characteristics and risks associated with trading the Funds, including how shares in the Funds are created and redeemed, the requirement that ETP Holders deliver a prospectus to investors purchasing shares of the Funds prior to or concurrently with the confirmation of a transaction, applicable

Exchange rules, how information regarding the per share IOPV is disseminated, trading information, and the applicability of suitability rules (as set forth in PCXE Rule 9.2(a)–(b)).<sup>40</sup> The circular will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Act.

#### g. Initial Share Issuance and Continued Trading

The Funds are subject to the criteria for initial and continued listing of ICUs pursuant to PCXE Rule 5.2(j)(3), Commentary .01 (d), which requires that a minimum of 100,000 shares of a series of ICUs be outstanding at commencement of trading. As noted in the Funds' prospectus, one Creation Unit consists of 300,000 shares with respect to the iShares MSCI Germany Index Fund; 200,000 shares with respect to the iShares MSCI Australia Index Fund; 100,000 shares with respect to each of the iShares MSCI Austria, Canada and Mexico Index Funds; and 50,000 shares with respect to the iShares MSCI EMU Index Fund. Therefore, one Creation Unit outstanding at the commencement of trading of each country-specific Fund on the Exchange, and two Creation Units outstanding at the commencement of trading of the iShares MSCI EMU Index Fund on the Exchange, will satisfy the Exchange's initial listing criteria. The Exchange believes that the proposed number of shares outstanding at the commencement of trading for each Fund is sufficient to provide market liquidity and to further the Funds' investment objective.

As the listing exchange for the Funds, the PCX will consider the halting of trading and delisting of a Fund in any of the following circumstances: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Fund, there are fewer than 50 record and/or beneficial holders of the Fund for 30 or more consecutive trading days; (ii) the value of the underlying index is no longer calculated or available; or (iii) such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will halt trading in a Fund if the Index Value or IOPV applicable to such Fund

is no longer calculated or disseminated.<sup>41</sup> In addition, the PCX will remove a Fund from trading and listing upon termination of the Fund that issued the shares of the Fund.<sup>42</sup>

#### h. Initial Listing and Annual Listing Maintenance Fees

The Exchange initial listing fee applicable to the listing of the Funds is \$20,000, which covers all of the Funds.<sup>43</sup> In addition, the annual listing maintenance fee applicable to the Funds will be based upon the year-end aggregate total shares outstanding of the Funds.<sup>44</sup>

#### i. Surveillance Procedures

The Exchange will closely monitor activity in the trading of the shares of the Funds to identify and deter any potential improper trading activity in the Funds. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. Specifically, the Exchange will rely on its existing surveillance procedures governing equities and exchange-traded funds, which have been deemed adequate under the Act. The Exchange has developed procedures to closely monitor activity in the shares of the Funds to identify and deter potential improper trading activity.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the underlying

<sup>41</sup> In the event an Index value or IOPV is no longer calculated or disseminated from 9:30 a.m. (ET) to 4:15 p.m. (ET), the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. As stated, the Funds may trade in ArcaEx's late trading session without dissemination of the IOPV in its late trading session. However, to trade in all other ArcaEx trading session, an IOPV must be disseminated at least every 15 seconds. Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

<sup>42</sup> PCXE Rule 5.5(g)(2).

<sup>43</sup> The initial listing fee covers all funds listed by a fund issuer or "family." There will be no initial listing fees for any subsequent funds that may be listed on the Exchange by iShares, Inc. See Securities Exchange Act Release No. 34–50591 (October 26, 2004), 69 FR 63427 (November 1, 2004) (SR–PCX–2004–63) (approving adoption of new listings fees for exchange-traded funds and closed-end funds); Securities Exchange Act Release No. 34–51519 (April 11, 2005), 70 FR 20199 (April 18, 2005) (SR–PCX–2005–37) (extending implementation date to April 1, 2005).

<sup>44</sup> *Id.* The calculation of the aggregate total shares outstanding will also include the shares outstanding of any subsequent funds that may be listed on the Exchange by iShares, Inc.

<sup>38</sup> The IOPV Calculator at the time of this filing is Bloomberg, L.P. ("Bloomberg"). When determining the foreign exchange rate, Bloomberg uses an aggregation of bank provided rates that may differ from the aggregation of bank provided rates utilized by WM Reuters in determining the foreign exchange rate. See Amendment No. 3.

<sup>39</sup> Telephone Conference between David Strandberg, Attorney, Archipelago, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on February 2, 2006.

<sup>40</sup> The Commission has issued an order ("Order") granting the Funds an exemption from Section 24(d) of the Investment Company Act of 1940. See, e.g., Investment Company Act Release No. 25623 (June 25, 2002). Any Product Description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order.



index, such issuer or broker-dealer is required to erect and maintain a "firewall" in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the underlying index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of underlying indexes be performed by an independent third party who is not a broker-dealer.

#### j. Exchange Trading Rules and Policies

As ICUs under PCXE Rule 5.2(j)(3), the shares of the Funds will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities. With respect to trading halts, the PCX may consider all relevant factors in exercising its discretion to halt trading in the Funds. Trading on the PCX in the Funds may be halted because of market conditions or for reasons that, in the view of the PCX, make trading in the Funds inadvisable. These may include (1) the extent to which trading is not occurring in the underlying securities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>45</sup> In addition, PCXE Rule 7.12 sets forth the trading parameters, *i.e.*, "circuit breakers," applicable to the Funds in periods of extraordinary market volatility.

Shares of the Funds will trade on ArcaEx from 9:30 a.m. (ET) until 8 p.m., even if the IOPV is not disseminated from 4:15 p.m. (ET) until 8 p.m. (ET). Shares of the Funds will trade in a minimum price variation of \$0.01 pursuant to PCXE Rule 7.6. Trading pertaining to odd-lot trading in Exchange equities (PCXE Rule 7.38) will also apply. Shares of the Funds will be deemed "Eligible Securities" as defined in PCXE Rule 7.55(a)(3), for purposes of the Intermarket Trading System ("ITS") Plan, and therefore will be subject to the trade-through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

#### k. Due Diligence

The Information Circular will note that, pursuant to PCX Rule 9.2(a), each ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any

account accepted or carried by such ETP Holder.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>46</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5), of the Act,<sup>47</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

#### 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 that is 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 Exchange requests the Commission to find good cause to accelerate effectiveness of this rule filing pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication of the proposed rule change in the **Federal Register**. The Funds are substantially the same in structure as other iShares index funds, which have an established and active trading history on the exchanges. The Exchange believes that its proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, protect investors and the public interest.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2005-116 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-PCX-2005-116. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-116 and should be submitted on or before March 6, 2006.

#### V. Commission Findings

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.<sup>48</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>49</sup> and will promote just and equitable principles of trade, and facilitate transactions in securities,

<sup>48</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> See *supra* note 14.

<sup>46</sup> 15 U.S.C. 78f(b).

<sup>47</sup> 15 U.S.C. 78f(b)(5).



and, in general, protect investors and the public interest. The Commission believes that the Exchange's listing standards, trading rules, suitability and disclosure rules for the Funds are consistent with the Act. The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Commission notes that it previously approved the original listing and trading of the Funds on the Amex.<sup>50</sup> Further, with respect to each of the following key issues, the Commission believes that the Funds satisfy established standards.

#### A. Surveillance

The Commission notes that the Underlying Indexes are broad-based and are composed of securities having significant trading volumes and market capitalization, thus impeding improper trading practices in the Shares, the ability to use the Shares to manipulate the underlying securities, and the ability to use the Shares as a surrogate to trade one or a few unregistered securities. Nevertheless, the PCX represents that its surveillance procedures applicable to trading in the proposed iShares are adequate to properly monitor the trading of the Funds. The Exchange also is able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market. In addition, the Commission notes that the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

As stated, when a broker-dealer, or 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 or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that the Exchange has represented that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI Indices.

#### B. Dissemination of Information About the Shares

In approving the Funds for listing and trading on the PCX, the Commission notes that the Underlying Indexes are broad-based indexes. If there is an overlap between the foreign jurisdiction and the PCX trading hours, these index

values are disseminated through various main market data vendors at least every 60 seconds during such overlap in trading hours. Otherwise, the Funds provide the Index closing value at <http://www.iShares.com>. Additionally, the Commission notes that the Exchange will disseminate through the facilities of CTA during NYSE trading hours at least every 15 seconds a calculation of the IOPV (which will reflect price changes in the applicable foreign market and changes in currency exchange rates), along with an updated market value of the Shares. Comparing these two figures will help investors to determine whether, and to what extent, the Shares may be selling at a premium or discount to NAV and thus will facilitate arbitrage of the Shares in relation to the Index component securities.

The Commission also notes that the Web site for the Funds (<http://www.iShares.com>), which is and will be publicly accessible at no charge, will contain the Shares' prior business day NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV.

#### C. Listing and Trading

The Commission finds that the Exchange's rules and procedures for the proposed listing and trading of the Funds are consistent with the Act. Shares of the Funds will trade as equity securities subject to PCX rules including, among others, rules governing trading halts, prospectus delivery, and customer suitability requirements. In addition, the Funds will be subject to PCX listing and delisting/halt rules and procedures governing the trading of Index Fund Shares on the Exchange. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including suitability and prospectus delivery requirements.

#### D. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>51</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the

listing and trading standards in PCXE Rule 5.2(j)(3) (ICUs), and the Commission has previously approved the listing of these securities on the Amex.<sup>52</sup> Therefore, the Commission does not believe that the proposed rule change raises issues that have not been previously considered by the Commission.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>53</sup> that the proposed rule change (SR-PCX-2005-116), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>54</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-1931 Filed 2-10-06; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53226; File No. SR-Phlx-2005-92]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fees

February 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On January 27, 2006, the Phlx submitted an amendment to the proposed rule change ("Amendment No. 1").<sup>3</sup> The Phlx has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii)<sup>4</sup> and Rule 19b-

<sup>52</sup> See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (approving the listing and trading of the ICUs for trading on the Amex).

<sup>53</sup> 15 U.S.C. 78s(b)(2).

<sup>54</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, Phlx clarified the manner in which the fee will be assessed and made technical changes to the rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>50</sup> See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR-Amex-95-43).

<sup>51</sup> 15 U.S.C. 78s(b)(2).