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fairactexhibit.pdf](http://www.cftc.gov/ofm/fairactexhibit.pdf)

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BILLING CODE 3110-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting; Agency 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 February 12, 2001.

A closed meeting will be held on Tuesday, February 13, 2001, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions; and  
Institution and settlement of administrative proceedings of an enforcement nature.

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: February 6, 2001.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43926; File No. SR-BSE-00-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Trading of S&P Global 100 Index Fund Shares

February 5, 2001.

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 26, 2000, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The BSE proposes to trade, pursuant to unlisted trading privileges ("UTP"), shares of an exchange traded fund (the "Fund") based on the S&P Global 100 Index. The text of the proposed rule change is available at the Office of the Secretary, the BSE or 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 BSE 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 BSE 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

On June 28, 2000, the Commission approved the proposed rule change of a new listing standard, *Chapter XXIV-B, Index Fund Shares*, which allowed the BSE to list and trade Index Fund

Shares.<sup>3</sup> *Chapter XXIV-B* also permits the BSE to list or trade Index Fund Shares under the expedited procedures described in Rule 19b-4(e) under the Act, so long as such securities meet specific structural standards. The BSE has used these procedures to trade, pursuant to UTP, several Index Fund Shares, including series of the iShares Trust based on domestic stock indices.

The BSE now proposes to trade, via UTP, shares of the Fund based on the S&P Global 100 Index (the "Index" or "Underlying Index") pursuant to *Chapter XXIV-B, Index Fund Shares*.<sup>4</sup> The Fund is included in the iShare Trust (the "Trust"),<sup>5</sup> and Barclays Global Fund Advisors ("BGFA"), a subsidiary of Barclays Global Investors, N.A. ("BGI"), acts as the advisor (the "Advisor") to the Fund. Standard & Poor's ("S&P"), a division of The McGraw-Hill Companies, Inc., is the Index provider. The Index is sponsored by S&P and the New York Stock Exchange, Inc. ("NYSE"), with the additional collaboration of several major exchanges from around the world.

As described below, S&P Global 100 Index Fund Shares are structurally similar to the Index Fund Shares already approved for trading on the BSE. The information about the Fund is based on the recent rule filing by the NYSE.<sup>6</sup>

*The Underlying Index.* A detailed description of the Underlying Index for the Fund was prepared by S&P and filed by the NYSE as Exhibit 2 in its submission.<sup>7</sup> The description includes, but is not limited to, information regarding index description, component selection criteria, country representation, index maintenance, and industry group distribution by market capitalization. The Underlying Index description, including any changes thereto, may be found on the S&P Global

<sup>3</sup> See Securities Exchange Act Release No. 42988 (June 28, 2000), 65 FR 42041 (July 7, 2000) (SR-BSE-00-05).

<sup>4</sup> The Exchange recognizes that the Fund will trade pursuant to its Index Fund Shares Rules and Rule 19b-4(f)(6), not Rule 19b-4(e). Telephone conversation between Ester Radovsky, Listings Analyst, BSE, and Heather Traeger, Attorney, Division of Market Regulation, Commission, January 30, 2001.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940, as amended ("1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N-1/A under the Securities Act of 1933, as amended and under the 1940 Act relating to the Fund (File No. 333-92935 and 811-09729).

<sup>6</sup> See Securities Exchange Act Release No. 43658 (December 2, 2000) 65 FR 77408 (December 11, 2000) (SR-NYSE-00-53).

<sup>7</sup> *Id.*

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

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

web site at <http://www.spglobal.com/ssindexmainglobal100.html>.

*General description of the fund.* The Fund offers and issues shares ("Fund Shares") at their net asset value ("NAV") only in aggregations of a specified number of Fund Shares (referred to as a "Creation Unit"), generally in exchange for a basket of equity securities included in the Underlying Index (the "Deposit Securities"), together with the deposit of a specified cash payment (the "Cash Component").<sup>8</sup> Fund Shares are redeemable only in Creation Unit aggregations, and, generally, in exchange for portfolio securities and a specified cash payment. Creation Units are aggregations of 50,000 Fund Shares. The Trust reserves the right to offer a "cash" option for creations and redemptions of Fund Shares.

*"Passive" or indexing investment approach.* The Fund seeks investment results that, before expenses, correspond generally to the price and yield performance of companies in the Index. The Advisor uses a "passive" or indexing approach in seeking to achieve the Fund's investment objective.

*Representative sampling.* The Fund uses representative sampling to track the Underlying Index. This means that the Fund is invested in a representative sample of stocks in the Underlying Index, which have a similar investment profile as the Underlying Index. Stocks selected have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation, and yield), and liquidity measures similar to those of the relevant Underlying Index. A fund that uses representatives sampling generally does not hold all of the stocks included in its underlying index.

The Fund invests at least 90% of its total assets in the stocks of the Underlying Index. The Fund may hold up to 10% of its total assets in stocks not included in the Underlying Index. For example, the Advisory may invest in stocks not included in the Underlying Index in order to reflect various

<sup>8</sup> The Cash Component is an amount equal to the Balancing Amount. The "Balancing Amount" is an amount equal to the difference between the NAV of the Fund Shares (per Creation Unit) and the "Deposit Amount." The "Deposit Amount" is an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number (i.e., the NAV per Creation Unit exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the creator. If the Balancing Amount is a negative number (i.e., the NAV per Creation Unit is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

corporate actions (such as mergers) and other changes in the Underlying Index (such as reconstitutions, additions and deletions). The Fund may also invest in stocks outside the underlying Index to meet the diversification requirements of a regulated investment company under the Internal Revenue Code (the "Code").<sup>9</sup> As long as the Fund invests at least 90% of its total assets in the stocks of the Underlying Index, it may also invest its other assets in futures contracts, options on futures contracts, options, and swaps related to the Underlying Index, as well as cash and cash equivalents.

*Correlation.* An index is a theoretical financial calculation while the Index Fund Share is an actual investment portfolio. The performance of the Fund and the Underlying Index will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. It is expected that over time, the correlation between the Fund's performance and that of the 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 a "tracking error."

*Industry concentration policy.* The Fund does 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). However, the Fund does concentrate to approximately the same extent that the Underlying Index concentrates in the stocks of a particular industry or group of industries. 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.

*Creations and redemptions of fund shares.* The Fund Shares are "created" at their NAV by specialists, large investors, and institutions only in Creation Units of 50,000 Shares. A "creator" deposits into the Fund a specified portfolio of stocks closely approximating the holdings of the Fund (the "Deposit Securities") and specified amount of cash (the "Cash Component") in exchange for 50,000 Fund Shares.

Similarly, the Fund Shares can only be redeemed in Creation Units of 50,000 Fund Shares, principally in-kind for a specified portfolio of stocks held by the Fund then comprising the Deposit Securities and the then applicable Cash Component. Except when aggregated in Creation Units, Fund Shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form. Creations and redemptions must be made through a firm that is either a member of the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant and, in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations ("Participant Agreement"). The Trust imposes transaction fees in connection with creation and redemption transactions.

*Availability of information regarding fund shares and underlying indices.* The list of names and amount of each security constituting the current Deposit Securities, and the Cash Component effective as of the previous business day, per outstanding share of the Fund, is made available each business day. In addition, an amount representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis is disseminated every 15 seconds during the Exchange's regular trading hours, through the facilities of the Consolidated Tape Association ("CTA"). The value of the Underlying Index is updated intra-day on a real-time basis as individual component securities of the Underlying Index change in price. These intra-day values of the Underlying Index are disseminated every 15 seconds throughout the trading day. In addition, a value for the Underlying Index is disseminated once each trading day, based on closing prices in the relevant exchange market.

<sup>9</sup> In order for the Fund to qualify to tax treatment as a regulated investment company, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50 percent 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 the purpose of this calculation in respect to any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other regulated investment companies.)

The Fund makes available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit aggregation, as well as information regarding the cash-balancing amount. The NAV for the Fund is calculated and disseminated daily. In addition, the Adviser maintains a web site that provides information about the returns and methodology of various indices, which includes the Underlying Index for the Fund. The Trust also maintains a web site that includes the Fund prospectus and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for the Fund. There is also a variety of data disseminated with respect to the Index on a daily basis by means of CTA including shares outstanding and cash amount per Creation Unit aggregation, which is made available prior to the opening of the trading on the Exchange. The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

*Dissemination of indicative portfolio value.* An updated indicative portfolio value ("Value") for the Fund is disseminated through the CTA as calculated by a securities information provider ("Value Calculator"). The Value<sup>10</sup> is disseminated on a per Fund Share basis every 15 seconds during regular Exchange trading hours for the Fund.

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

recently calculated NAV on a per Fund Shares basis, it is possible that the value of the portfolio of securities held by the 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.

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

For the Fund, the Value Calculator utilizes closing prices (in applicable foreign currency prices) in the principal foreign market(s) for securities in the Fund portfolio, and converts the price to U.S. dollars. This Value is updated every 15 second during the NYSE's trading hours to reflect change in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value also includes the applicable Cash Component for the Fund. For foreign stocks, the principal foreign markets that have trading hours overlapping regular trading hours on the NYSE, the Value Calculator will update the applicable Value 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 current currency exchange rate. When the foreign market or markets are closed but the NYSE is open, the Value is updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

*Trading of Fund Shares on the Exchange.* The Fund will be subject to the criteria for initial and continued listing of Index Fund Shares described in *Chapter XXIV-B*.

The BSE will require that a minimum of 100,000 Shares be outstanding when trading begins at the BSE. This number of Shares is comparable to the number of shares outstanding when other Index Fund Shares began trading on the BSE. The BSE believes that the proposed minimum number of Shares required to be outstanding when trading begins on the BSE 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 performance of the Index.

Fund Shares are registered in book-entry form through the DTC. Trading in Fund Shares on the BSE will be effected until 4:00 p.m. each business day. The minimum trading variation for the Fund will be \$.01 of \$1.00.

Dividends from net investment income will be declared and paid at least annually by the Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but the Fund may make distributions on a more frequent basis to comply with distribution requirements of the Code. The Fund may make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

As an Index Fund Shares, the Fund is considered a "security" under the Rules of the Exchange and is subject to all applicable trading rules, including the provisions of *Chapter II, Section (4)* (ITS "Trade-Throughs and Locked Markets"), which prohibit BSE members from initiating trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility related trading halt provisions and responsibilities of the assigned specialist firm. Exchange equity margin rules will apply.

The Fund is also subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (*Chapter II, Section 34A*), and the Exchange's rule which allows Exchange officials to halt trading in specific securities, under certain circumstances (*Chapter II, Section 34B*). In exercising the discretion described in *Chapter II*, appropriate BSE officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the index and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The BSE's surveillance procedures for the Fund will be similar to the procedures used for other Index Fund Shares and will incorporate and rely upon existing BSE surveillance systems.

The Exchange will issue a circular to its members and member organizations, prior to the commencement of trading, alerting them to the characteristics of the Fund Shares, including the fact that Shares are not individually redeemable, but are redeemable only in Creation Units. The circular will also confirm that investors purchasing Fund Shares will be required to receive a prospectus prior to or concurrently with the

<sup>10</sup> The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is utilized generally in connection with creations and redemptions of the Fund Shares Creation Unit aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the portfolio for the Fund. In addition to the value of the Deposit Securities for the Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

confirmation of a transaction in the Shares, will inform members that the procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Trust Prospectus; and will confirm for members that the Fund Shares are subject to existing Exchange rules relating to trading halts. Finally, the circular will inform members that before a member, member organization, or person associated with a member organization should make a determination that the Fund is suitable for the customer and the person making the recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction.

## 2. Statutory Basis.

The BSE believes that the proposed rule change is consistent with section 6(b)(5)<sup>11</sup> of the Act, which requires that an exchange have rules that are 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 transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The BSE seeks to trade issues already trading on another exchange and believes that this increased competition among markets can benefit investors.

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

The BSE has neither solicited nor received any written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the BSE has given notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE seeks to have the proposed rule change become operative on February 2, 2001, in order to allow the BSE to immediately trade, pursuant to unlisted trading privileges, shares of S&P Global 100 Index. The Shares are already being traded on the NYSE.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change becomes operative immediately as of February 2, 2001.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE.

All submissions should refer to File No. SR-BSE-00-21 and should be submitted by March 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8010 Filed 2-8-01; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-43924; File No. SR-CHX-01-04]**

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees**

February 5, 2001.

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 January 30, 2001, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

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

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

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

<sup>4</sup> See Securities Exchange Act Release No. 43778

<sup>11</sup> 15 U.S.C. 78f(b)(5).