

Two of the participants, in addition to the Amex, have chosen not to participate—the Philadelphia Stock Exchange, Inc. and the Cincinnati Stock Exchange, Inc. Second, providing automatic executions—rather than operating an auction market—is not a precondition to competing in Nasdaq securities. The very essence of UTP is to permit competition among markets and market structures. Requiring one market structure for trading Nasdaq securities would defeat this purpose. Third, while compliance with the Firm Quote Rule²⁷ is easier to monitor in an automatic execution environment, the Firm Quote Rule does not require market participants to be subject to automatic execution. Indeed, the Firm Quote Rule has always applied to exchange trading as well as over-the-counter trading.

The Commission is unconvinced by the assertion of Knight and the Panel that Amex specialists will have an informational advantage because they will be able to monitor trading and quoting activity of Nasdaq securities while not being subject to automatic execution. Amex specialists, as well as the specialists of all other Plan participants, will be able to see the market for Nasdaq securities. They will have no special advantage. As noted above, two other participants have chosen not to participate in Nasdaq's automatic execution system. Furthermore, Amex specialists must comply with the Firm Quote Rule. If an Amex specialist quotes the best bid or offer for a security and receives an order, it must fill the order in compliance with the Firm Quote Rule. To be sure, it will generally take longer to receive a fill from an Amex specialist than it will to receive a fill from a Nasdaq member that is subject to automatic execution. This does not, however, make trading pursuant to UTP under the Plan impermissible under the Act and the rules and regulations thereunder.

In November of 2001, the Commission approved the most recent amendment to the Plan.²⁸ Among other things, the 12th Amendment extended UTP to all Nasdaq securities, SmallCap as well as NNM. The 12th Amendment also admitted the Amex as a participant. As has been the case since the inception of the Plan, exchange participants are required to provide telephone access to Nasdaq market makers. This proposed rule change, SR-Amex-2001-106, spells out the rules that an Amex specialist

must follow if it trades Nasdaq securities on the Exchange. The commenters' concerns appear to be with the extension of UTP to the regional exchanges and the choice of some of the regional exchanges not to participate in Nasdaq's automated execution system. The Commission believes that the commenters' concerns are more appropriately raised in the context of the approval and amendment process of the Plan, rather than in the context of a single Plan participant's rules related to trading under the Plan and that are consistent with the Plan.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-106 and should be submitted by August 29, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-Amex-2001-106), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46297; File No. SR-CHX-2002-25]

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

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b4 thereunder,² notice hereby is given that on July 30, 2002, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. 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 CHX proposes to amend its membership dues and fees schedule effective through December 31, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria, described below. The text of the proposed rule change is available at the CHX and at the Commission.

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

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 proposed change to the CHX fee schedule would provide for continued assessment of a marketing fee, in an amount equal to \$.01 per share,

²⁷ 17 CFR 240.11Ac1-1.

²⁸ See Securities Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

applicable to transactions occurring on or before December 31, 2002. The marketing fee would apply only to "Subject Transactions"³ in "Subject Issues"⁴ and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently assesses a marketing fee under a provision of the CHX fee schedule that, by its terms, expires on July 31, 2002.⁵ Under the system currently in place, the CHX calculates, bills, and collects the marketing fee and remits the proceeds to the specialist firm trading the Subject Issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment-for-order flow arrangements relating to the Subject Issue (and possibly also to market makers who contribute to market share growth in certain instances).⁶ The remaining undistributed funds in excess of \$1000 are refunded, on a quarterly basis, to the paying parties pro rata, in proportion to the fees they have paid.

The CHX notes that the proposed marketing fee provision does not differ from the previous versions, except that it would extend application of the marketing fee through December 31, 2002. The CHX intends that the continued imposition of the marketing fee will allocate equitably the financial burden of seeking order flow for Subject Issues. According to the CHX, in the absence of the marketing fee the CHX

specialist trading a Subject Issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as the licensing fees that the licensor of the product imposes.⁷ CHX market makers participating in transactions in Subject Issues, conversely, do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect or decline imposition of the marketing fee depending on whether the specialist believes it is appropriate for a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX anticipates that the proposed rule change will continue to provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The CHX believes that the proposed rule change will not 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 Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX received one written comment from a member in advance of the CHX Finance Committee meeting on July 23, 2002. This letter from John P. Finnegan of Susquehanna Investment Group, a CHX market maker in the Nasdaq 100 Index (or QQQ), noted that since imposition of the Marketing Fee the number of CHX market makers trading in exchange-traded funds ("ETFs") has dropped from fifteen market makers to three market makers. Mr. Finnegan requested that the CHX reduce the amount of the marketing fee significantly, to enable the CHX to "be competitive with other marketplaces."

⁷ The marketing fee, under the rule change proposed herein, will be assessed only against exchange-traded fund products, which virtually always have an associated licensing fee. Currently, the marketing fee is assessed only against the Nasdaq-100 Index exchange-traded fund, commonly known as "QQQ."

⁸ 15 U.S.C. 78f(b)(4).

The CHX believes that this analysis mistakenly attributes the decline in CHX market maker activity to the imposition of the marketing fee. The CHX believes that the decline is attributable to other factors, including significant competition for ETF order flow from other national market participants and alternative trading systems. According to the CHX, one alternative trading system has recently captured nearly a one-third market share in the QQQ product, a market share higher than that sustained by the QQQ listing market. Moreover, although the CHX acknowledges that imposition of the marketing fee does increase a market maker's cost of trading Subject Issues on the CHX, the CHX believes that the often significant costs associated with the Subject Issues, including increasingly hefty license fees, amply justify asking the CHX members who trade the Subject Issues to share the costs of attracting the order flow and trading these popular products on the CHX.

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

The foregoing rule change establishes or changes a due, fee, or other CHX charge and therefore has become effective pursuant to section 19(B)(3)(A) of the Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 19b-4(f)(2).

³ "Subject Transaction" means: (a) Any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

⁴ "Subject Issue" means any issue which constitutes an exchange-traded fund and meets the following two criteria: (a) Average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

⁵ See Securities Exchange Act Release Nos. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001); 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (extending program through June 30, 2002); and 46233 (July 19, 2002), 67 FR 48960 (July 26, 2002) (extending program through July 31, 2002).

⁶ See Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR-CHX-2001-10) (describing potential arrangements between specialists and market makers). According to the CHX, no such arrangements are currently in place. Conversation between Kathleen M. Boege, Associate General Counsel, CHX, and Patrick M. Joyce, Special Counsel, Division of Market Regulation, Commission, on July 31, 2002.

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 the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2002-25 and should be submitted by August 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Release No. 34-46298; File No. SR-NYSE-2002-27

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the iShares MSCI Japan Index Fund

August 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, the "1934 Act"¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 24, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The NYSE proposes to trade, on an unlisted trading privileges ("UTP") basis, the iShares MSCI Japan Index Fund ("Fund"), which is a type of Investment Company Unit ("ICU") and is considered an Exchange Traded ("ETF").

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

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 the Exchange states are consistent with the listing criteria currently used by the American Stock Exchange LLC ("Amex") and other exchanges, and trading standards pursuant to which the Exchange may trade ICUs on the Exchange on a UTP basis.³ The Exchange now proposes to trade the Fund on a UTP basis. The Fund has been listed and actively traded on the Amex since 1996⁴ and trades on other securities exchanges⁵ and in the over-the-counter market. The information below is intended to provide a description of how the Fund was created and is traded.⁶

Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment adviser to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is a

³ In 1996, the Commission approved Section 703.16 of the NYSE's *Listed Company Manual* ("Manual"), which sets forth the rules related to the listing of ICUs. See Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the *Manual* and Exchange Rule 1100. See Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

⁴ The Fund and other MSCI funds similar in nature were formerly known as World Equity Benchmark Securities ("WEBS") and were 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) ("Amex WEBS Approval Order").

⁵ See, e.g., Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (approving the trading of WEBS on a UTP basis on the Chicago Stock Exchange, Inc.).

⁶ Much of the information in this filing was taken from the Prospectus of iShares, Inc., dated as of January 1, 2002, as supplemented, and from the Web sites of the Amex (www.Amex.com) and iShares (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 of the Web sites.

wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"). BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.⁷

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The distributor is not affiliated with the Exchange or the Advisor.⁸

The shares of the Fund are issued by iShares, Inc., and are based on the Morgan Stanley Capital International ("MSCI") Japan Index. iShares, Inc. is an open-ended management investment company operating 22 separate investment portfolios or "index funds." The MSCI Japan Index (the "Index") is intended to represent the Japanese market. The Index consists of stocks traded primarily on the Tokyo Stock Exchange. As of July 16, 2002, the three largest stocks in the Index were Toyota Motor Corp., Sony Corp., and NTT DoCoMo Inc. The investment objective of the Fund is to seek investment results similar to the performance of the stock markets in Japan, as represented by the Index. The Fund uses a "passive," or indexing, approach to attempt to produce investment results that approximate the investment performance of the Index. The Fund will normally invest at least 95% of its total assets in stock that are represented in the Index, and will, at all times, invest at least 90% of its total assets in such stocks. The Fund will not hold all of the stocks that comprise the Index, but will attempt to hold a representative sampling of the securities in the Index in a technique known as "portfolio sampling." iShares, Inc. will issue and redeem the shares of the Fund only in aggregations of 600,000 shares (each aggregation a "Creation Unit"), which had an estimated value of approximately \$5 million as of January 1, 2002. On July 16, 2002, the NAV of the Fund was \$8.36, and the Fund traded at a price of \$8.25 per share. As of the same day, the Fund had total net assets of approximately \$732,548,000 and 87,600,000 shares outstanding. MSCI generally seeks to have 85% of the free float-adjusted market capitalization of a country's stock

⁷ Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on August 1, 2002.

⁸ Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 1, 2002.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.