the Act,[8] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members.

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

Nasdaq does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

The forgoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act [9] and subparagraph (f)(2) of Rule 19b–4 [10] thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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. 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*. Please include File Number SR–NASD–2004–149 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–149. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2004–149 and should be submitted on or before November 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2655 Filed 10–14–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50497; File No. SR– NFA–2004–02]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Adopting Interpretive Notice to Bylaw 1101 and Compliance Rules 2–9 and 2–29

October 6, 2004.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–7 thereunder,[2] notice is hereby given that on September 10, 2004, the National Futures Association (''NFA'') 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 NFA. On September 9, 2004, the NFA filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') for approval. Pursuant to Section 19(b)(7)(B) of the Act,[3] the proposed rule change may take effect upon approval by the CFTC. On September 28, 2004, NFA filed with the Commission Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NFA proposes to adopt NFA Bylaw 1508 regarding securities futures agreements. The text of the proposed rule change appears below. New language is in italics.

* * * * *

NFA Bylaw 1101, Compliance Rules 2–9 and 2–29: Guidelines Relating to the Registration of Third-Party Trading System Developers and the Responsibility of NFA Members for Promotional Material That Promotes Third-Party Trading System Developers and Their Trading Systems

In recent years, there has been a significant increase in the number of futures trading systems being marketed to the public. These trading systems typically are computerized programs that generate signals as to when to buy and sell commodity futures and options contracts.

A number of NFA Member firms offer trade execution services to customers who use these computerized trading systems, many of which are developed by third-party trading system developers (''third-party system developers''), who are neither NFA members nor registered with the CFTC. Typically, in these situations, the customer will execute a Letter of Direction that directs the Member to place trades for the customer in strict accordance with the signals generated by the trading system. In some cases, the Letter of Direction is more limited and includes instructions to follow only certain signals (e.g.,

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[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78s(b)(7)(B).

[4] *See* letter from Kathryn Page Camp, Associate General Counsel, NFA, to John C. Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated September 28, 2004. Amendment No. 1 makes minor technical changes to the proposed rule text.

signals in given contracts or signals that meet particular parameters). In almost all cases in which a Letter of Direction is used, the Member is not permitted to use any judgment when placing orders for the customer.

This notice is designed to provide guidance as to the circumstances which may give rise to liability on the part of the Member, under NFA Bylaw 1101, for providing execution services to users of computerized trading systems developed by non-Member third-party system developers. This notice will also discuss the factors that may cause a Member to be responsible, under NFA Compliance Rule 2–29, for promotional material which promotes these trading systems and the Member's supervisory obligations under NFA Compliance Rule 2–9.

Registration Requirements for Third-Party System Developers

Section 1a(6) of the Commodity Exchange Act (''CEA'') defines a CTA as any person who for compensation or profit, engages in the business of advising others, directly or through publications, writings, or electronic media, as to the value of or the advisability of trading commodity futures. Generally, Section 4m of the CEA requires individuals who fall within this definition to register with the CFTC. In March 2000, the CFTC adopted CFTC Rule 4.14(a)(9) to create an exemption from the CEA's registration requirements for CTAs that provide standardized advice by means of media such as newsletters, pre-recorded telephone hotlines, Internet Web sites, and non-customized computer software.

To qualify for the exemption, under Rule 4.14(a)(9)(i) a CTA may not direct client accounts. As defined by Commission Rule 4.10(f), ''[d]irect, as used in the context of trading commodity interest accounts, refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.'' In a Commission Staff letter issued in May 2003, Commission Staff indicated that an agreement authorizing a person to direct a client's account—and, thus, requiring the person to be registered as a CTA—may be an informal agreement. The fact pattern addressed by the Commission's Staff letter involved a developer of a computerized trading system who was registered as an associated person (''AP'') of an introducing broker (''IB''). The AP's activities on behalf of the IB consisted solely of soliciting clients to use his trading program. Such clients executed a ''letter of direction'' providing that the IB should execute trades for the clients' accounts and ''follow [the trading program] signals as close as reasonably possible.''

In analyzing the above fact pattern, Commission Staff concluded that, since the clients' contact with the AP/trading system developer included not only the trading program, but also the opening of a trading account that would be traded pursuant to a ''letter of direction,'' there was an ''informal arrangement'', for which the exemption provided under Rule 4.14(a)(9) was not intended. After specifically noting that the ''whole of [the AP/trading system developer's] activities as an AP of the IB consisted of the solicitation of clients for the trading program, CFTC staff determined that registration as a CTA was required of either the IB or the AP. (See CFTC staff letter, No. 03–26, May 30, 2003, re Section 4m—Interpretation with regard to Commodity Trading Advisor Registration.)

Rule 4.14(a)(9)(ii) also provides that, to qualify for the exemption, a CTA may not provide ''commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.'' So long as the CTA's advice is based on or tailored to such information, the CTA is required to register even if it gives the same advice to groups of similarly situated clients.

In determining whether advice is ''based on or tailored to'' within the meaning of 4.14(a)(9)(ii), the context of the advice will be taken into account. For example, if the advice is provided in a book or a periodical, that factor may weigh against a finding that the CTA is providing advice ''based on or tailored to'' the characteristics of particular clients. On the other hand, if the advice is provided to a particular client in a face-to-face communication or over the telephone, that factor may weigh in favor of a finding that the CTA's advice is ''based on or tailored to'' that particular customer's characteristics, since such a context suggests that the CTA is being responsive to the client's individual needs.[1]

Whether a third-party system developer is required to be registered as a CTA still depends on the particular facts of each case. In some cases, the third-party system developer—or any third-party, for that matter—may be required to register as an IB, if it refers customers to an NFA Member and receives compensation for the referrals. Members who have questions concerning the application of Rule 4.14 are urged to seek advice from the CFTC.

Regardless of whether a third-party system developer is required to register as a CTA, the question sometimes arises whether the IBs involved must also register as CTAs. If the IB and the third-party system developer are operated as wholly independent entities and the IB has no authority to deviate from the third-party system developer's recommendations, generally the IB need not also register as a CTA. This is clearly the case where a customer independently selects a trading system and the IB does not solicit discretionary trading authority. However, if any of these factors change (e.g., the IB has authority to deviate from the trading system by selecting only some of the trades generated by the system), the IB may be required to register as a CTA, unless the IB is otherwise exempt because its activities related to placing trades based on the recommendations of the trading system are ''solely in connection with its business as an IB.''

NFA Bylaw 1101 provides, in pertinent part, that no Member may carry an account, accept an order or handle a transaction in commodity futures on behalf of any non-Member that is required to be registered as a CTA or in some other capacity. Therefore, if it appears that a third-party system developer, with whom an NFA Member does business, is required to be registered as a CTA or in some other capacity, the Member should request that the third-party system developer provide a letter from counsel stating the reasons why registration is not required.[2] *In the absence of such a letter, the Member should request that the third-party system developer apply for registration and NFA membership. If the third-party system developer fails or refuses to register and become an NFA Member, the Member should terminate its relationship with the third-party system developer to avoid liability under NFA Bylaw 1101.*

A Member's Responsibility for Misleading Promotional Material Which Promotes a Third-Party System Developer's Trading Program

NFA has encountered, with increasing frequency in recent years, misleading promotional material promoting trading

[1] *The Commission gives a number of examples, which illustrate the application of Rule 4.14(a)(9) in specific situations, in the Rule's publication in the . (**Federal Register:** March 10, 2000 (Volume 65, Number 48, pages 12938–12943.)*

[2] *Member firms may rely in good faith upon a copy of a letter from counsel. However, in some cases, a Member may have to perform additional due diligence to ascertain whether a third-party system developer is required to be registered.*

systems developed by third-party system developers, who are not NFA Members, and for which an NFA Member provides trade execution services. Often this promotional material uses hypothetical or simulated results—which are trading results not achieved by an actual account—that are not clearly identified as hypothetical and show impressive gains, when customers actually using the trading system have suffered substantial losses. In this and other contexts, both NFA and the Commission have brought numerous enforcement actions charging fraud in the use of such promotional material.

Following are several examples of situations where Members may be held accountable under Compliance Rules 2–29 and 2–9 for misleading promotional material that promotes third-party trading system developers and their trading systems.

Direct Responsibility

If an NFA Member or its Associates prepare or distribute the promotional material, the Member will be responsible for its misleading content under NFA Compliance Rule 2–29, which prohibits a Member from using misleading or deceptive promotional material.

Agency Responsibility

NFA's Business Conduct Committee has always recognized that each Member is responsible for the acts of its agents. This certainly applies to the preparation of advertising material. Thus, an NFA Member may be responsible, under NFA Compliance Rule 2–29, for misleading promotional material prepared and disseminated by a third-party trading system developer, whether or not the third-party trading system developer is an NFA Member or not, if there is an agency relationship between the NFA Member and the third-party trading system developer. (Of course, if the third-party trading system developer is also an NFA Member, it too would be responsible under NFA Compliance Rule 2–29 for the misleading promotional material that it prepared and distributed.)

In determining whether there is an agency relationship between the Member and the third-party system developer, which would trigger liability under NFA Compliance Rule 2–29, the central inquiry focuses on the nature of the business relationship between the parties and whether the parties have expressly or implicitly agreed that one may act for the other. As the CFTC has held, whether an agency relationship exists turns ''on an overall assessment of the totality of the circumstances in each case.'' The more limited the contacts are between the third-party system developer and the NFA Member, the more likely it is that an agency relationship will not be found to exist between the parties.

If there is an agency relationship between the Member and the third-party system developer, then the Member has an affirmative duty, under NFA Compliance Rule 2–9, to supervise the activities of the third-party system developer/agent.

Supervisory Responsibility Under NFA Compliance Rule 2–9

Even where no agency relationship exists, a Member whose web site links to or otherwise refers customers to a third-party system developer or has a referral agreement with a third-party trading system developer should conduct a due diligence inquiry into the system developer's advertising practices with a view towards identifying and avoiding the misleading advertising practices described earlier, i.e., the use of exaggerated profit claims, and hypothetical or simulated results which are not clearly identified as hypothetical, or which show highly profitable performance when actual customers trading the system have sustained significant losses.[3]

The fact that a Member creates a hyperlink from its web site or otherwise refers customers to a third-party system developer or has a referral agreement with a third-party system developer does not, in and of itself, make the Member firm accountable for the third-party system developer's web site or promotional material. Member firms should bear in mind, though, that their supervisory obligations under Rule 2–9 and Rule 2–29 require them to diligently supervise their employees and agents who are responsible for creating and maintaining hyperlinks to web sites of third-party system developers; or establishing referral agreements with third-party system developers. Members should consider whether appropriate supervisory procedures include periodic inquiries as to whether their employees and agents are conducting due diligence with respect to the third-party system developer's web site or advertising, and taking appropriate steps if deficiencies are found in such web site or advertising. A Member's failure to supervise its employees and agents in this regard will constitute a violation of NFA Compliance Rule 2–9 on the part of the Member. Moreover, in these situations, Member firms should not seek to circumvent NFA's promotional material requirements by relying upon the unregistered status of the third-party trading system developer.

* * * * *

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

In its filing with the Commission, NFA has prepared 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. NFA 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

In recent years, NFA has witnessed a growing number of futures trading systems being marketed to the public. Typically, these are computerized trading systems which are developed by third-party trading system developers (''third-party system developers''), who are not required to be registered with the CFTC or members of NFA. The proposed Interpretive Notice to NFA Bylaw 1101 and Compliance Rules 2–9 and 2–29 provides guidance on two issues that NFA members face when they offer trade execution services to customers who use these computerized trading systems.

NFA believes that the Interpretive Notice summarizes the registration requirements for commodity trading advisors (''CTA''). NFA Bylaw 1101 provides, in pertinent part, that no member may carry an account, accept an order or handle a transaction in commodity futures on behalf of any non-member that is required to be registered as a CTA or in some other capacity. This section of the Interpretive Notice is designed to assist members in complying with NFA Bylaw 1101 when they do business with third-party system developers.

According to NFA, the Interpretive Notice also addresses members' potential responsibility under NFA Compliance Rules 2–9 and 2–29 for misleading promotional material that promotes these trading systems. Such promotional material often relies upon extremely favorable hypothetical results which are not clearly identified as hypothetical and which are dramatically

[3] *See also NFA's interpretive notice entitled ''NFA Compliance Rule 2–9: Supervisory Procedures for E-Mail and the Use of Web Sites'' (¶9037).*

better than the actual performance of customers who have used the system, many of whom have sustained large losses. Pursuant to NFA Compliance Rule 2–29(c), a member firm is prohibited from using these types of hypothetical results unless it meets very stringent requirements, which non-member third-party system developers are not required to meet.

For example, NFA recently reviewed a promotional piece used by a non-member third-party system developer to promote its trading system, which boasted of hypothetical annual rates of return ranging from 86.4% to 151.7%. In this particular case, the NFA member offering trade execution services for this system claimed that no customers had traded this system. Because the third-party system developer is a non-member, NFA was unable to determine whether any customers had actually used the trading system and, if so, whether their actual performance corresponded to the advertised favorable hypothetical returns. According to NFA, the CFTC has also been confronted with and taken action against third-party system developers that use misleading promotional material to promote their trading systems.

The proposed Interpretive Notice reminds members that they will be directly responsible under NFA Compliance Rule 2–29 if the member or its Associates prepares or distributes misleading promotional material regarding a third-party system developer or its trading system. It also reminds members that they may be responsible for misleading promotional material prepared and disseminated by a third-party trading system developer if there is an agency relationship between the NFA member and the third-party trading system developer.

Finally, the Interpretive Notice states that, even where no agency relationship exists, members have a supervisory obligation under NFA Compliance Rules 2–9 and 2–29 to diligently supervise their employees and agents who are responsible for creating and maintaining hyperlinks to web sites of or establishing referral agreements with third-party system developers. A member whose web site links to, or otherwise refers its customers to, a third-party system developer or who has a referral agreement with a third-party trading system developer should conduct a due diligence inquiry into the system developer's advertising practices.

2. Statutory Basis

NFA believes that the proposed rule change is consistent with Section 15A(k) of the Act.[5]

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

NFA 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 and the Commodity Exchange Act.

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

NFA states that it worked with industry representatives in developing the proposed rule change. NFA did not, however, publish the proposed rule change to the membership for comment. NFA did not receive comment letters concerning the proposed rule change.

In working with the industry, NFA staff discussed the proposed Interpretive Notice with NFA's Futures Commission Merchant (''FCM''), Introducing Broker (''IB''), and Commodity Pool Operator/Commodity Trading Advisors (''CPO/CTA'') Advisory Committees and with the Futures Industry Association (FIA) Law and Compliance Committee, and most of their suggestions were incorporated in the final version adopted by NFA's Board of Directors (''Board''). The IB and CPO/CTA Advisory Committees supported the Interpretive Notice. The FCM Advisory Committee and FIA's Law and Compliance Committee still have reservations about some of the language regarding members' supervisory responsibilities when linking to or entering into referral arrangements with third-party system developers.

NFA's Board adopted the Interpretive Notice by a vote of 21 to 1 with one abstention, concluding that the Interpretive Notice accurately describes members' responsibilities under NFA rules and provides needed guidance to members that deal with third-party system developers.

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

The Commission notes that NFA's proposal will become effective upon approval by the CFTC. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[6]

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. 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*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NFA–2004–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NFA–2004–02. 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 NFA. 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–NFA–2004–02 and should be submitted on or before November 5, 2004.

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78s(b)(1). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 28, 2004, the date NFA filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2654 Filed 10–14–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50505; File No. SR–NYSE–2004–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. To List and Trade the iShares® FTSE/Xinhua China 25 Index Fund

October 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2004 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') 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 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.

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

The NYSE proposes to list and trade the iShares® FTSE/Xinhua China 25 Index Fund (''Fund''), an exchange traded fund, which is a type of Investment Company Unit (''ICU'').

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 NYSE 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 III, 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 are consistent with the listing criteria currently used by the American Stock Exchange LLC and other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs, or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[3]

The Exchange now proposes to list and trade under Section 703.16 of the NYSE Listed Company Manual and NYSE Rule 1100 shares of the Fund,[4] a series of the iShares Trust (''Trust'').[5] Because the Fund invests in foreign securities not listed on a national securities exchange or the Nasdaq Stock Market, the Fund does not meet the ''generic'' listing requirements of Section 703.16 of the Manual, which permits the listing and trading of ICUs pursuant to Rule 19b–4(e) under the Exchange Act.[6] Therefore, to list the Fund (or trade pursuant to unlisted trading privileges), the Exchange must file, and obtain Commission approval of, a proposed rule change pursuant to Rule 19b–4 under the Exchange Act.

As set forth in detail herein, the Fund will hold certain securities and other instruments selected to correspond generally to the performance of the FTSE/Xinhua China 25 Index (''Underlying Index''). The Fund intends to qualify as a ''regulated investment company'' (''RIC'') under the Internal Revenue Code (the ''Code''). Barclays Global Fund Advisors (''Advisor'' or ''BGFA'') is the investment advisor to the Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (''BGI''), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. (''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares (see ''Issuance of Creation Unit Aggregations'' below). The Distributor is not affiliated with the Exchange or the Advisor. The Trust has appointed Investors Bank & Trust Co. (''IBT'' or ''Administrator'') to act as administrator, custodian, fund accountant, transfer agent, and dividend disbursing agent for the Fund. The Exchange expects that performance of the Administrator's duties and obligations will be conducted within the provisions of the Investment Company Act and the rules thereunder. There is no affiliation between the Administrator and the Trust, the Advisor or the Distributor.

FTSE/Xinhua Index Ltd. (''FXI''),[7] the sponsor and compiler of the FTSE/Xinhua China 25 Index, is not affiliated with the Trust, the Administrator, the Distributor, or with the Advisor or its affiliates.[8] The Fund is not sponsored,

[7] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] In 1996, the Commission approved Section 703.16 of the NYSE 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 listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[4] iShares is a registered trademark of Barclays Global Investors, N.A.

[5] The Trust is registered under the Investment Company Act of 1940, as amended (''Investment Company Act''). On January 22, 2003, the Trust filed with the Commission a Registration Statement for the fund on Form N–1A under the Securities Act of 1933, as amended, and under the Investment Company Act relating to the Fund (File Nos. 333–92935 and 811–09729) (as amended, the ''Registration Statement''). On January 27, 2004, the Trust filed a Form N–1A to update certain Fund information.

On October 5, 2004, the Commission approved the Second Amended and Restated Application for an Amended Order under Sections 6(c) and 17(b) of the Investment Company Act. *See* Investment Company Act Release No. 26626 (October 5, 2004) (''Amended Order''); Investment Company Act Release No. 26597 (September 14, 2004), 69 FR 56105 (September 17, 2004) (File No. 812–12936). The Amended Order permits the Trust to offer three new International ETFs, including the Fund, and permits the Fund, along with certain other International ETFs, to invest in certain depository receipts, as described below.

[6] 17 CFR 240.19b–4(e).

[7] FXI is a Hong Kong incorporated, joint venture company between FTSE, the global index company, and Xinhua Financial Network.

[8] Although FXI is not an affiliated person, or an affiliated person of an affiliated person of the Advisor, an employee of Barclays Global Investors, North Asia Limited (''BGIL''), an affiliate of the Advisor, currently serves as one of the 19 members of the FTSE/Xinhua Index Committee. The FTSE/Xinhua Index Committee provides practitioner input into the construction of the FTSE/Xinhua indices and independent oversight to ensure that relevant index construction rules are being followed. The Index Committee is currently composed of 19 members, four of whom are currently affiliated with non-U.S. broker-dealers. The role of the Index Committee is to review the appropriateness of existing index rules, to provide oversight to ensure that index rules are properly followed, and to recommend changes to the rules in response to changes in the underlying market that the index seeks to represent. Input from persons or experts (*i.e.,* practitioners) who have