

February 28, 2006 available at <http://www.sec.gov/rules/other/33-8666.pdf> and published in the **Federal Register** [71 FR 11090] on March 3, 2006 available at <http://www.sec.gov/rules/other/33-8666fr.pdf>. The public is invited to submit written statements for the meeting.

**DATES:** Written statements should be received on or before April 5, 2006.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### Electronic Statements

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acspc.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-23 on the subject line; or

#### Paper Statements

- Send paper statements in triplicate to Nancy M. Morris, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (<http://www.sec.gov/info/smallbus/acspc.shtml>).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. O'Neill, Special Counsel, at (202) 551-3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: March 20, 2006.

**Nancy M. Morris,**

*Committee Management Officer.*

[FR Doc. E6-4278 Filed 3-23-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53521; File No. SR-Amex-2005-072]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of the iShares<sup>®</sup> Silver Trust

March 20, 2006.

#### I. Introduction

On June 30, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission (the "SEC" or "Commission"), 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> a proposed rule change to list and trade under Amex Rules 1200A *et seq.* iShares<sup>®</sup> Silver Trust shares (the "Silver Shares" or "Shares").<sup>3</sup> On September 15, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 23, 2006.<sup>5</sup> The Commission received 255 comment letters regarding the proposed rule change.<sup>6</sup> On February 28, 2006, the Exchange filed a response to these comments.<sup>7</sup> This order approves the proposed rule change, as amended.

#### II. Description of Proposal

In January 2005, the Exchange adopted rules for the listing and trading of "Commodity-Based Trust Shares."<sup>8</sup> Commodity-Based Trust Shares (the "Commodity Shares") are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the

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

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

<sup>3</sup> iShares<sup>®</sup> is a registered trademark of Barclays Global Investors, N.A.

<sup>4</sup> Amendment No. 1 to the proposed rule change clarifies the valuation procedure that would be used by the Bank of New York to determine the daily value of the silver contained in the iShares<sup>®</sup> Silver Trust.

<sup>5</sup> See Securities Exchange Act Release No. 53130 (January 17, 2006), 71 FR 3570 (January 23, 2006) ("Notice").

<sup>6</sup> These comment letters are available for review on the Commission's Web site at <http://www.sec.gov/rules/sro/amex/amex2005072.shtml>.

<sup>7</sup> See letter from Neal L. Wolkoff, Chairman and Chief Executive Officer, Amex, to Nancy M. Morris, Secretary, Commission, dated February 28, 2006 ("Wolkoff Letter").

<sup>8</sup> See Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust).

trust. Commodity Shares are a form of trust issued receipt ("TIR")<sup>9</sup> that instead of holding one or more discrete securities will hold one or more physical commodities. The Exchange has listed the iShares COMEX Gold Trust<sup>10</sup> and trades pursuant to unlisted trading privileges ("UTP"), the streetTRACKS Gold Trust,<sup>11</sup> as Commodity-Based Trust Shares pursuant to Exchange Rules 1200A *et seq.*

Pursuant to Amex Rule 1201A, the Exchange may approve for listing and trading Commodity Shares on an underlying commodity.<sup>12</sup> Accordingly, the Amex proposes to list for trading Silver Shares under Exchange Rule 1200A *et seq.*<sup>13</sup>

The Exchange proposes to list and trade the Silver Shares, which represent beneficial ownership interests in the net assets of the iShares Silver Trust<sup>14</sup> (the "Silver Trust" or "Trust") consisting primarily of silver bullion. Each Silver Share will initially correspond to 10 ounces of silver.<sup>15</sup> The Silver Shares will meet the initial and continued listing criteria under Amex Rule 1202A.<sup>16</sup>

<sup>9</sup> A Trust Issued Receipt or "TIR" is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust that holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities. The Exchange defines a "security" or "securities" to include stocks, bonds, options, and other interests or instruments commonly known as securities. See Article I, Section 3(j) of the Amex Constitution.

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the UTP trading of the streetTRACKS Gold Shares).

<sup>12</sup> Amex Rule 1200A(b)(2) defines "commodity" as set forth in Section 1(a)(4) of the Commodity Exchange Act ("CEA").

<sup>13</sup> See applicable Amex Rules 1200A, 1201A, 1202A, 1203A, 1204A, and 1205A.

<sup>14</sup> The Trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940. The Silver Trust will be formed under a depositary trust agreement, among Bank of New York, as Trustee, Barclays Global Investors International, Inc. ("Barclays" or "Sponsor"), the Sponsor, all depositors, if any, and the holders of Silver Shares.

<sup>15</sup> The amount of silver associated with each basket (and individual Silver Share) is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

<sup>16</sup> The initial listing standards set forth in Amex Rule 1202A(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section "Criteria for Initial and Continued Listing," the

Continued

In effect, purchasing Silver Shares will provide investors a new mechanism to participate in the silver market. Information about the liquidity, depth, and pricing mechanisms of the international silver market, management and structure of the Trust, and description of the Silver Shares follows below.

#### A. Description of the Silver Market

The silver market is a global marketplace consisting of both over-the-counter ("OTC") transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options. In its filing with the Commission, Amex provided a description of the silver market.<sup>17</sup>

##### 1. The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global silver trading. The London OTC market is the largest silver clearing market. The Exchange believes the period of greatest liquidity in the silver market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the Commodity Exchange, Inc. ("COMEX").<sup>18</sup> This period lasts for approximately five (5) hours<sup>19</sup> each New York business day, from 8:25 a.m.–1:25 p.m. Eastern Time ("ET").

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London (the largest market), New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of

Exchange expects the minimum number of Silver Shares required to be outstanding at the time of trading to be 150,000.

<sup>17</sup> See Notice, *supra* note 5.

<sup>18</sup> COMEX is a division of the New York Mercantile Exchange, Inc. ("NYMEX") where silver futures contracts and related options are traded. The open outcry trading hours of the COMEX silver futures contract is from 8:25 a.m. to 1:25 p.m. ET Monday through Friday. NYMEX ACCESS®, an electronic trading system, is open for price discovery on COMEX silver futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning ET; and from 7 p.m. Sunday night until Monday morning at 8 a.m. ET.

<sup>19</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

the London Bullion Market Association ("LBMA").<sup>20</sup>

The Exchange indicates that there are no authoritative published figures for overall worldwide volume in silver trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.<sup>21</sup> The Exchange notes that the monthly average daily volume figures published by the LBMA for 2004 range from, a high of 143.4 million to a low of 75.5 million troy ounces per day. Through May 2005, the monthly average daily volume has ranged from a high of 152.1 million to a low of 76.9 million. The COMEX also publishes price and volume statistics for exchange-traded transactions in contracts for the future delivery of silver (and related options).<sup>22</sup>

##### 2. Futures Exchanges

The Exchange states that the most significant silver futures exchanges are the COMEX and the Tokyo Commodity Exchange ("TOCOM").<sup>23</sup> Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs on these exchanges are negotiable. The Exchange represents that as a matter of practice, only a small percentage of the future market turnover ever comes to physical delivery of the silver represented by the contracts traded. Both COMEX and TOCOM permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts

<sup>20</sup> Further information about the LBMA may be found at <http://www.lbma.org.uk>. There are currently nine (9) market-making members of the LBMA, five of which offer clearing services, and 51 full members.

<sup>21</sup> Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm). The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

<sup>22</sup> Information regarding price and average daily volume on the COMEX can be found at [http://www.nymex.com/jsp/markets.md\\_annual\\_volume.jsp](http://www.nymex.com/jsp/markets.md_annual_volume.jsp).

<sup>23</sup> There are other silver exchange markets, such as the London Metals Exchange, the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

as a counterparty for each member for clearing purposes.

##### 3. Silver Market Regulation

There is no direct regulation of the global OTC market in silver. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Market Act of 2000 ("FSM Act"). The Exchange states that under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards and deposits of silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the U.S. OTC market for silver are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodities Futures Trading Commission ("CFTC"), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

#### B. Product Description

##### 1. Creation and Redemption Process

Issuances of Silver Shares will be made only in baskets of 50,000 shares or multiples thereof (the "Basket

Aggregations" or "Baskets").<sup>24</sup> The Trust will issue and redeem Basket Aggregations on a continuous basis, by or through registered broker-dealers that have entered into participant agreements (each, an "Authorized Participant")<sup>25</sup> with the Sponsor and the Trustee, Bank of New York ("BNY").<sup>26</sup> Following issuance, the Shares will be traded on the Exchange similar to other equity securities, such as shares of the iShares COMEX Gold Trust and the streetTRACKS Gold Trust.<sup>27</sup>

Basket Aggregations of Shares will be issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the "Basket Silver Amount") will be determined on each business day by the Trustee, BNY.<sup>28</sup> Authorized Participants that wish to purchase a Basket must transfer the Basket Silver Amount to the Trust in exchange for a Basket of Shares. Authorized Participants that wish to redeem a Basket of Shares will receive the Basket Silver Amount in exchange for each Basket surrendered. JP Morgan Chase Bank, N.A., London Branch ("JP Morgan Chase" or "Custodian") will be the custodian for the Trust and responsible for safekeeping the silver.<sup>29</sup>

On each business day, BNY will make available immediately prior to the opening of trading on the Amex, the Indicative Basket Silver Amount for the creation of a Basket.<sup>30</sup> BNY will adjust

<sup>24</sup> Initially, each Share represents 10 ounces of silver. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>25</sup> An "Authorized Participant" is a person, who at the time of submitting to the Trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company ("DTC") Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

<sup>26</sup> BNY will charge a transaction fee in connection with the redemption and/or creation of Baskets. In addition, Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 shares of the Trust that compose the initial Baskets.

<sup>27</sup> See *supra* notes 8 and 11.

<sup>28</sup> A Troy ounce, equal to 1.0971428 ounces avoirdupois, with a minimum fineness of 0.999. "Avoirdupois" is the system of weights used in the U.S. and U.K. for goods other than precious metals, gems, and drugs. In that system, a pound is 16 ounces and an ounce is 16 drams.

<sup>29</sup> If the total value of the Trust's silver held by the Custodian exceeds \$1 billion, then the Custodian will be under no obligation to accept additional silver deliveries. In such a case, the Trustee will retain an additional custodian.

<sup>30</sup> The Sponsor will also make the next day's Indicative Basket Silver Amount available on the Trust Web site (<http://www.iShares.com>) shortly after 4 p.m. ET each business day. The Basket Silver Amount, Indicative Basket Silver Amount, and net asset value ("NAV") will be publicly available

the quantity of silver included in the Basket Silver Amount (determined shortly after 4 p.m.) to reflect sales of silver to cover expenses and any loss of deposited silver that may occur since the previous calculation. The Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association ("CTA"), an amount representing on a per share basis, the current value of the Basket Silver Amount, known as the "Indicative Trust Amount."

The Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Silver Shares to constitute a Basket Aggregation (*i.e.*, 50,000 shares). An Authorized Participant redeeming a Basket Aggregation will receive the silver amount of the Basket Silver Amount announced by the Trustee. Upon the surrender of the Shares and payment of applicable Trustee's fee and any expenses, taxes or charges, BNY will deliver to the redeeming Authorized Participant the amount of silver corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, silver will then be delivered to the redeeming Authorized Participants in the form of physical bars only. Silver Shares will be registered in book entry form through DTC.

The Exchange states that the Basket Silver Amount necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual. The initial Basket Silver Amount is 500,000 ounces of silver (with each Share initially representing 10 ounces of Silver). On each day that the Amex is open for regular trading, BNY will adjust the quantity of silver constituting the Basket Silver Amount as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio)<sup>31</sup> and any

simultaneously to all market participants (to avoid any informational advantage) on either the Trust Web site or Amex Web site. These items will also be communicated to Authorized Participants via facsimile or electronic mail message. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>31</sup> The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's fee, the Custodian's fee, Amex listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to \$100,000 per annum in legal fees and expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the iShares, including applicable SEC registration

extraordinary expenses or liabilities not assumed by the Sponsor. BNY will determine the Basket Silver Amount for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing by the number of Baskets outstanding. Fractions of an ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Silver Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Basket Silver Amount usually will not change even though the value of the Basket Silver Amount may change based on the market price of silver.

## 2. Determination of NAV, Basket Silver Amount, and Indicative Basket Amount

Shortly after 4 p.m. (ET) each business day, the BNY will determine the NAV of the Trust, utilizing that day's announced London silver fix price (unless the Sponsor, in consultation with the Trustee, determines that an alternative publicly available pricing benchmark more fairly represents the commercial value of the silver held by the Trust).<sup>32</sup> Once the value of the silver is determined, BNY will then determine an "adjusted NAV" by subtracting all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets (*i.e.*, the Sponsor's fee)), expenses, and other liabilities of

fees. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>32</sup> In Amendment No. 1, Amex clarified that if there is no London silver fix price on that day, the BNY will use the most recently announced London silver fix price unless the BNY, in consultation, with the Sponsor (Barclays), determines such London silver fix price to be inappropriate.

Barclays, in consultation with the BNY, may determine that an alternative publicly available pricing benchmark more fairly represents the commercial value of silver held by the Trust. In the case of a temporary disruption of the London silver fix price, 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 for a temporary disruption of the London silver fix, a determination by Barclays, in consultation with the BNY, to use an alternative pricing source for silver, is appropriate. However, the Exchange represents that if the use of an alternative pricing source for the London silver fix price is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act.

the Trust from the total value of silver and all other assets of the Trust. This adjusted NAV is then used to compute the Sponsor's fees that are calculated from the value of Trust assets. Then to determine the final NAV, BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. BNY will calculate the NAV per share by dividing the NAV by the number of Silver Shares outstanding.

After the NAV is determined, at or about 4 p.m. each business day, BNY will then determine the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. that day. BNY will also at the same time determine an "Indicative Basket Silver Amount" that Authorized Participants can use as an indicative amount of silver to be deposited for issuance of the Silver Shares on the next business day. Thus, although Authorized Participants place orders to purchase Silver Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. or shortly thereafter.

Shortly after 4 p.m. each business day, BNY and the Sponsor will disseminate the NAV for the Silver Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by BNY to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site at <http://www.iShares.com>. The Amex will also disclose the NAV, Basket Silver Amount, and Indicative Basket Silver Amount on its Web site.

The Sponsor fee, in the absence of any extraordinary expenses and liabilities, is established at 0.50% of the net assets of the Trust. As a result, assuming there is no extraordinary movement in the intraday market price of silver, the amount of silver by which the Basket Silver Amount will decrease each day will be predictable (*i.e.*,  $\frac{1}{365}$ th of the net asset value of the Trust multiplied by 0.50%). Given the anticipated predictability of the daily decline in the Basket Silver Amount, as stated, BNY will disclose and disseminate the Indicative Basket Silver Amount for the next business day shortly after 4 p.m. Authorized Participants may use the Indicative Basket Silver Amount as guidance regarding the amount of silver expected to be deposited with the custodian, JP Morgan Chase, in connection with the issuance of Silver Shares on the next business day.

As a result, the amount of silver required for the Basket Silver Amount is not disseminated during the trading day to correspond to changes in the value of silver as measured by spot silver prices.<sup>33</sup> Before 4 p.m., the Authorized Participants may use the Indicative Basket Silver Amount published by the Sponsor and BNY the day before as guidance in respect of the amount of silver that they may expect to be required to deposit. But if the Indicative Basket Silver Amount published by the Sponsor and BNY turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by the Sponsor), the amount actually determined by BNY will control.

### 3. Liquidity

The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Amex. While the Silver Shares will trade on the Exchange until 4:15 p.m. ET, the Exchange states that liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Silver Shares may widen as a result of reduced liquidity.<sup>34</sup>

The Exchange believes that Silver Shares will not trade at a material discount or premium to the underlying silver held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Basket Aggregations, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. If the price of the Shares deviates enough from the price of silver to create a material discount or

premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the silver that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for silver, and sell the silver in the cash market at a profit. If the Shares are expensive compared to the silver that underlies them, an arbitrageur may sell the Shares short, buy enough silver to acquire the number of Shares sold short, acquire the Shares through the creation process, and deliver the Shares to close out the short position. In both instances, the Exchange states that the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying silver.

### C. Availability of Information Regarding Silver Prices

Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will be disseminated over the CTA's Network B. In addition, the Exchange states that there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.<sup>35</sup> Complete real-time data

<sup>33</sup> The Amex will disseminate via the facilities of the CTA an "Indicative Trust Value" at least every 15 seconds during the trading day that represents an indicative value for the Silver Shares based silver dealer pricing. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on March 9, 2006.

<sup>34</sup> As noted above in the section titled "Description of the Silver Market," the period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich, and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

<sup>35</sup> In addition, EBS also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. EBS was launched in September 1993 by a group of the world's largest foreign exchange market making banks. The Exchange states that EBS is the pre-eminent provider of precious metals and foreign exchange trading solutions to the precious metals and interbank spot foreign exchange community. Approximately 500,000 ounces in gold, 4 million ounces in silver and \$110 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. The shareholders of EBS include the subsidiaries of the following organizations: ABN AMRO, Bank of America,

for silver futures contracts and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Wall Street Journal*. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.

The Amex, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price (*i.e.*, real time information) of silver on its own public Web site at <http://www.amex.com>.<sup>36</sup>

#### D. Availability of Information Regarding Silver Shares

The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price<sup>37</sup> in relation to the NAV as of the time the NAV is calculated (the "Bid-Asked Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (h) the

Barclays, Citibank, Commerzbank, Credit Suisse First Boston, Lehman Brothers, HSBC, JPMorgan Chase, The Royal Bank of Scotland, S-E-Banken, UBS AG and the Minex Corporation of Japan. See <http://www.ebs.com>.

<sup>36</sup> The Trust Web site's silver spot price will be provided by TheBullionDesk at <http://www.thebulliondesk.com>. The Amex will provide a link to the Trust Web site. TheBullionDesk is not affiliated with the Trust, Sponsor, Custodian or the Exchange. The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate, as noted above in the discussion titled "Availability of Information Regarding Silver Prices," that there are other sources for obtaining the silver spot price. In the event that, during Amex trading hours, the Trust Web site should cease to provide this indicative silver spot price from an unaffiliated source and the intraday "Indicative Trust Value" of the Shares is not disseminated via the CTA, the Exchange will delist the shares. See "Criteria for Initial and Continued Listing," below.

<sup>37</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

Prospectus; and (g) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. The Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV, and shares outstanding. As stated, the Trust Web site will also provide a real time indicative silver spot price through TheBullionDesk at <http://www.thebulliondesk.com>.<sup>38</sup> Notwithstanding that they will be provided free of charge, the indicative spot price from TheBullionDesk on the Trust Web site and the Indicative Trust Value per Share disseminated via the CTA will be provided essentially on a real-time basis.<sup>39</sup> The Exchange will also make available on its Web site daily trading volume, closing prices, NAV, and the Basket Silver Amount, and the Indicative Basket Silver Amount. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.amex.com> to the Trust's Web site at <http://www.iShares.com>.

#### E. Dissemination of Indicative Trust Value

As noted above, BNY calculates the NAV of the Silver Trust once each trading day. In addition, BNY causes to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Silver Shares in Basket Aggregations. In addition, other investors can request such information directly from the BNY.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Participants wishing to create or redeem Silver Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (the "Indicative Trust

<sup>38</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>39</sup> These values are subject to an average delay of 5 to 10 seconds. The Indicative Trust Value per Share will not be posted on the Trust's Web site but will be disseminated via the facilities of the CTA. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on March 8, 2006.

Value"). The Indicative Trust Value will be disseminated on a per Silver Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Trust Value will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver from silver dealer pricing.<sup>40</sup> The Indicative Trust Value on a per Silver Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Silver Shares trading on the Exchange or the creation or redemption of Silver Shares. In addition, the Trust's Web site at <http://www.iShares.com> will also provide from TheBullionDesk continuously updated bids and offers indicative of the spot price of silver in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of silver.

#### G. Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares. The continued listing criteria provides for the delisting or removal from listing of the Silver Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Silver Shares: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Silver Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Silver Shares issued and outstanding; or (iii) if the market value of all Silver Shares is less than \$1,000,000.

- If the value of the underlying silver is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, Custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated silver value.

<sup>40</sup> See *supra* note 33.

- The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 150,000 Silver Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issues receipts and exchange-traded funds (“ETFs”). It is anticipated that the initial price of a Silver Share will be approximately \$91.<sup>41</sup> The Exchange believes that the anticipated minimum number of Silver Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Trust’s objective to seek to provide a simple and cost effective means of making an investment similar to an investment in silver.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.<sup>42</sup>

#### H. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Silver Trust is \$5,000. In addition, the annual listing fee applicable under Section 141 of the Amex Company Guide (“Company Guide”) will be based upon the year-end aggregate number of shares in all series of Silver Trusts outstanding at the end of each calendar year.

#### I. Trading Rules

Silver Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in Silver Shares. Silver Shares will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of

<sup>41</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (updating initial price of a Silver Share that initially will represent 10 ounces of silver).

<sup>42</sup> See The Exchange represents that Silver Shares qualifies for the exemption in Rule 10A–3(c)(7) under the Act.

\$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Silver Shares as eligible for this treatment.<sup>43</sup>

Silver Shares will be deemed “Eligible Securities,” as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Silver Shares made in connection with the creation and redemption of Silver Shares will not be subject to the prohibitions of Amex Rule 190.<sup>44</sup> Unless exemptive or no-action relief is available, Silver Shares will be subject to the short sale rule, Rule 10a–1 and Regulation SHO under the Act.<sup>45</sup> If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Silver Shares will generally be subject to the Exchange’s stabilization rule, Amex Rule 170, except that specialists may buy on “plus ticks” and sell on “minus ticks,” in order to bring the Silver Shares into parity with the underlying silver and/or futures price. Commentary .01 to Amex Rule 1203A sets forth this limited exception to Amex Rule 170.

Amex Rule 1203A relating to certain specialist prohibitions addresses potential conflicts of interest in connection with acting as a specialist in the Silver Shares. Specifically, Amex Rule 1203A provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Silver Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying silver, related

<sup>43</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange’s designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

<sup>44</sup> See Commentary .05 to Amex Rule 190.

<sup>45</sup> The Silver Trust has requested relief in connection with the trading of Silver Shares from the operation of the short sale rule, Rule 10a–1, and Regulation SHO under the Act.

silver futures contract or option, or any other related silver derivative. An affiliated person of the specialist, consistent with Amex Rule 193, may be afforded an exemption to act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying silver, related silver futures or options, or any other related silver derivative. In particular, Amex Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A(a) provides that the member organization acting as specialist in Commodity-Based Trust Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (see Rule 170). In addition, the member organization acting as specialist in Commodity-Based Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity-Based Trust Shares shall trade in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.<sup>46</sup>

Amex Rule 1204A(b) also ensures that specialists handling the Silver Shares provide the Exchange with all the necessary information relating to their

<sup>46</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(a)).

trading in physical silver, related silver futures contracts and options thereon, or any other silver derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Amex Rule 1204A(c) also prohibits the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivative (including the Silver Shares).<sup>47</sup>

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in Silver Shares. First, the Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange may halt trading in Silver Shares if conditions in the underlying silver market have caused disruptions and/or lack of trading. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. The Exchange will halt trading in the Shares if the Trust Web site (to which Amex will link) ceases to provide the value of the silver updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or the Exchange ceases to provide via the CTA the Indicative Trust

Value per Share updated at least every 15 seconds.<sup>48</sup>

#### *J. Information Circular*

The Amex will distribute an Information Circular (the "Circular") to its members in connection with the trading of Silver Shares. The Circular, will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Silver Shares are, notify members and member organizations about the procedures for creation and redemption of Silver Shares in a basket, the requirement, as described below, that members and member firms deliver a prospectus to investors purchasing the Silver Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per share Indicative Trust Value, NAV, and other information pertaining to the Shares, including trading information, trading halt procedures, and applicable suitability rules. For example, in the Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of Silver Shares in Basket Aggregations are described in the Prospectus and that Silver Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof. Similarly, the Information Circular will advise members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Silver Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Amex members purchasing Silver Shares from the Trust for resale to investors will deliver a prospectus to such investors.

The Circular will also explain that the Silver Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Silver Shares comprising a basket will represent a decreasing amount of silver

due to the sale of the Silver Trust's silver to pay Trust expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Silver Shares. The Exchange notes that pursuant to Amex Rule 411 (Duty to Know and Approve Customers), members and member organizations are required in connection with recommending transactions in the Silver Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

#### *K. Surveillance*

The Exchange represents that its surveillance procedures applicable to trading in the proposed Silver Shares will be similar to those applicable to the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issued receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. For intermarket surveillance purposes, the Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts. The Exchange submits that its surveillance procedures are adequate to properly monitor the trading of the Shares.

Also, as noted above, the Exchange states that Amex Rule 1204A(b), which requires that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative, will facilitate surveillance of specialist handling Silver Shares.

### **III. Discussion**

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent

<sup>47</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(c)).

<sup>48</sup> In the event such spot price of silver or Indicative Trust Value is no longer calculated or disseminated during the time the Silver Shares trade on Amex, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

with the Act<sup>49</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>50</sup>

The Commission received a total of 255 comment letters on the Exchange's proposed rule change. Of these 255 comment letters, 248 comments supported the proposed rule change and 7 comments opposed the proposed rule change. In general, those commenters opposed to the proposed rule change argued that approval of the Silver Shares would result in serious liquidity problems in the silver market.<sup>51</sup> In particular, these commenters contended that the Silver Shares would negatively impact the silver market because their creation would require the holding of silver in allocated accounts, which would drain large amounts of silver from the open market and cause higher prices for silver products.<sup>52</sup> Furthermore, the commenters asserted that the higher silver prices caused by the creation of the Silver Shares would cause the loss of jobs specific to the silver industry.<sup>53</sup>

The Exchange responded to these comments by stating that it believes that the listing and trading of Silver Shares will make the market for silver more efficient and transparent by providing investors with an easier and more cost-effective alternative for investing in silver. The Exchange asserts that a transparent marketplace for Silver Shares will allow for a more accurate representation of the supply and demand for silver, and therefore, a more accurate market price.<sup>54</sup> The Exchange also disagrees with some commenters' assertions that the Trust will reduce the amount of silver in the marketplace. In this regard, the Exchange notes that, at the commencement of trading, the Exchange will require 150,000 Silver

Shares to be outstanding, which will require 1.5 million ounces of silver to be deposited with the custodian of the Trust. The Exchange states that Trust assets will grow only to the extent that demand for the Silver Shares grows and that a wide variety of factors are capable of influencing supply and demand for silver.<sup>55</sup>

The Commission agrees with Amex that, like other derivative products, the Silver Shares will increase the efficiency and transparency of the market for the underlying instrument, *i.e.*, silver. In this regard, the Commission finds that the proposed rule change is in the public interest.<sup>56</sup> The Commission also does not believe that the Silver Shares are likely to cause serious liquidity problems in the silver market such that approval of the proposed rule change is not consistent with the Act.<sup>57</sup>

#### A. Surveillance

The Commission also finds that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices.<sup>58</sup> In its response to comment letters, the Amex represents that it has safeguards to ensure that the trading of the Silver Shares is fair and consistent with the operation of a public marketplace and the protection of investors and that surveillance procedures at the Exchange serve to deter and detect potential misconduct and manipulative acts by members and investors.<sup>59</sup>

In addition, the Exchange has an information sharing agreement with NYMEX for the purpose of providing information in connection with trading in or related to silver futures contracts.<sup>60</sup> Information sharing agreements with markets trading securities underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. Although an information sharing agreement with the OTC silver market is not possible, the Commission believes that Amex's information sharing agreement with NYMEX (of which COMEX is a division) and Exchange Rules 1203A and 1204A, create the basis for Amex to monitor for fraudulent and manipulative practices in the trading of the Silver Shares.

The Exchange also represents that it will review firms that have been actively acquiring or selling Silver

Shares.<sup>61</sup> Moreover, Amex Rule 1204A will require that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative. The Commission believes these reporting and record-keeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. Amex Rule 1204A will also prohibit the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivatives (including the Silver Shares). In addition, Amex Rule 1203A will prohibit the specialist in the Silver Shares from being affiliated with a market maker in physical silver, silver futures, or options on silver futures unless adequate information barriers are in place and approved by the Exchange.

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

The Commission finds that sufficient venues for obtaining reliable silver price information exist so that investors in the Silver Shares can adequately monitor the underlying spot market in silver relative to the NAV of their Silver Shares. As discussed more fully above, the Commission notes that there is a considerable amount of silver price and silver market information available 24 hours per day on public Web sites and through professional and subscription services. The Trust at its Web site (<http://www.iShares.com>) will provide a real time indicative silver spot price through TheBullionDesk at <http://www.thebulliondesk.com>. In addition, the Trustee will disseminate each day an estimated amount representing the Basket Silver Amount. The Exchange will also disseminate through the CTA the Indicative Trust Value on a per share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The last sale price for Silver Shares will also be disseminated on a real-time basis over the CTA.

The Commission also notes that the Trust's Web site at <http://www.iShares.com> is and will be publicly accessible at no charge and will contain the NAV of the Silver Shares and the Basket Silver Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a

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

<sup>50</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>51</sup> See letters from Congressman J. Gresham Barrett (3rd District, SC) to Christopher Cox, Chairman, Commission, dated February 16, 2006; Paul A. Miller, Executive Director, Silver Users Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006; John Patrick, Vice President, Fujifilm America, Inc., to Nancy M. Morris, Secretary, Commission, dated February 7, 2006; James F. Kirsch, President and Chief Executive Officer, Ferro Corporation, to Nancy M. Morris, Secretary, Commission, dated February 2, 2006; a Memorandum from the CPM Group regarding Silver Inventories, dated January 30, 2006; a Web Comment from Justin D. Reynolds, dated January 29, 2006; and a Web Comment from George Bloom, Jr., dated January 29, 2006. A Web Comment from Theodore Butler, dated February 6, 2006, made positive and negative conclusions about the proposed rule change.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See Wolkoff Letter, *supra* note 7.

<sup>55</sup> *Id.*

<sup>56</sup> 15 U.S.C. 78f(b)(5).

<sup>57</sup> 15 U.S.C. 78f(b)(5).

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

<sup>59</sup> See Wolkoff Letter, *supra* note 7.

<sup>60</sup> *Id.*

<sup>61</sup> See Wolkoff Letter, *supra* note 7.

calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site, to which the Amex will link, will also provide data in chart form 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, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Silver Shares and diminish the risk of manipulation or unfair informational advantage.

### C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Silver Shares are consistent with the Act. For example, Silver Shares will be subject to Amex rules governing trading halts, responsibilities of the specialist, and customer suitability requirements. In addition, the Silver Shares will be subject to Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares.

The Commission believes that listing and delisting criteria for the Silver Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Silver Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Silver Shares.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>62</sup> that the proposed rule change (SR-Amex-2005-072), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,<sup>63</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-4268 Filed 3-23-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53522; File No. SR-ISE-2006-09]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees

March 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2006, the International Securities Exchange, Inc. ("ISE" 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 ISE. On March 15, 2006, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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

The ISE is proposing to amend its Schedule of Fees to adopt a new method for charging Session/API Fees. The text of the proposed rule change, as amended, is available on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), at the principal office of the ISE, and at the Commission's Public Reference Room.

#### 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 ISE 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 ISE 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 purpose of this proposed rule change is to establish a new method for charging Session/API ("login") fees to members.<sup>6</sup> ISE currently charges members a fee for each authorized login that a member utilizes for quoting or order entry, with a lesser charge for authorized logins used for the limited purpose of "listening" to system broadcasts.<sup>7</sup> This proposed rule change seeks to further differentiate authorized logins in an effort to promote and encourage more efficient quoting. The Exchange proposes the following three categories of authorized logins: (1) Quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (*e.g.*, sending and receiving P and P/A orders, laying off orders, etc.)); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).<sup>8</sup>

<sup>6</sup> ISE represents that the fees proposed in this filing only apply to ISE members. The ISE Central Exchange System uses an open Application Programming Interface (API). ISE Members program to ISE's API in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The ISE Central Exchange System is the heart of ISE's marketplace, processing quotes from market makers, receiving orders from Electronic Access Members, tracking activity in the underlying markets, executing trades in the matching engine, and broadcasting trade details to the participating members.

<sup>7</sup> Prior to this filing, members were charged a fee of \$250 to "listen" to system broadcasts. This fee as it applied to market makers, which was previously listed under "EAM / Trade Review Terminal," now appears under "Market Makers"—"Listening."

<sup>8</sup> The Exchange issued a Market Information Circular and a Technical Bulletin on February 3, 2006 and February 9, 2006, respectively, to notify members of the change that is the subject of this filing. The Exchange further notes that this filing was considered and approved by the ISE's Market Maker Advisory Committee. The Exchange believes that the proposed fee changes are reasonable in that they are closely tailored to ISE's technology costs.

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

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

<sup>3</sup> Amendment No. 1 added clarifying language to the purpose section of the filing and made a technical change to the text of Exhibit 5 (ISE's Schedule of Fees). The correction to Exhibit 5 does not affect the fees covered by this filing.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>62</sup> 15 U.S.C. 78s(b)(2).

<sup>63</sup> 17 CFR 200.30-3(a)(12).