

which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, which submits annual recommendations to the President's Pay Agent about the locality pay program.

Based on recommendations of the Federal Salary Council, we use Metropolitan Statistical Area (MSA) and Combined Statistical Area (CSA) definitions established by the Office of Management and Budget as the basis for locality pay area definitions. The definitions of the terms CSA and MSA in section 531.602 of title 5, Code of Federal Regulations, and section 531.609(d) provide that locality pay area definitions change automatically when OMB adds locations to a CSA or MSA. Under the regulations, the changes in locality pay areas resulting from OMB additions to a CSA or MSA go into effect the first pay period beginning on or after January 1, of the following year.

On April 25, 2006, and May 26, 2006, OMB issued bulletins announcing corrections to OMB Bulletin 06-01 updating MSAs and CSAs. The bulletins add the Sherman-Denison, TX MSA to the Dallas-Fort Worth, TX CSA, and the Reading, PA MSA to the Philadelphia-Camden-Vineland, PA-NJ-DE-MD CSA. OMB also added the Providence-New Bedford-Fall River, RI-MA MSA to the Boston-Worcester-Manchester, MA-NH CSA, and the Greeley, CO MSA to the Denver-Aurora-Boulder, CO CSA. The addition to the Dallas CSA will add Grayson County, TX, to the Dallas locality pay area and the addition to the Philadelphia CSA will add Berks County, PA to the Philadelphia locality pay area. These changes will occur automatically under existing regulations. The other changes require corresponding changes in the official designation of the Boston and Denver locality pay areas but do not change the geographic scope of those pay areas because the Providence area is already included in the Boston locality pay area and the Greeley area is already part of the Denver locality pay area under the Pay Agent's rules for areas of application.

#### Impact and Implementation

The changes in locality pay area boundaries will move an estimated 61 GS employees from the Rest of U.S. (RUS) locality pay area to the Dallas

locality pay area and about 187 GS employees from the RUS locality pay area to the Philadelphia locality pay area, at a total cost of about \$600,000 per year. The changes become applicable on the first day of the first pay period beginning on or after January 1, 2007.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

[FR Doc. E6-19477 Filed 11-20-06; 8:45 am]

**BILLING CODE 6325-39-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27553; 812-13264]

#### HealthShares, Inc., et al.; Notice of Application

November 16, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

*Summary of Application:* Applicants request an order granting relief to permit (a) an open-end management investment company, the series of which consist of the component securities of certain equity securities indexes, to issue shares ("Shares") that can be redeemed only in large aggregations ("Creation Units"), (b) secondary market transactions in Shares to occur at negotiated prices on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange"), (c) dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"), and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

*Applicants:* HealthShares, Inc. ("Corporation"), Ferghana-Wellspring LLC ("Index Creator"), and X-Shares Advisors, LLC ("Advisor").

**DATES:** *Filing Dates:* The application was filed on March 1, 2006, and amended on August 23, 2006 and November 15, 2006.

*Hearing or Notification of Hearing:* An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 6, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 420 Lexington Avenue, Suite 2550, New York, NY 10170.

**FOR FURTHER INFORMATION CONTACT:** Shannon Conaty, Senior Counsel, at (202) 551-6827, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102 (telephone (202) 551-5850).

#### Applicants' Representations

1. The Corporation, a Maryland corporation, is registered under the Act as an open-end management investment company. Applicants currently intend to introduce 20 series ("Initial Funds") of the Corporation and may establish additional series in the future ("Future Funds," and together with the Initial Funds, "Funds"). The Advisor, a wholly-owned subsidiary of the Index Creator, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as the investment adviser to each Fund.<sup>1</sup> The Advisor expects to enter into a sub-advisory agreement with BNY Investment Advisors to serve as sub-adviser ("Sub-Advisor") to the Funds. The Sub-Advisor is not otherwise an affiliated person of the Advisor or the Index Creator and is registered as an investment adviser under the Advisers Act. ALPS Distributors, Inc., a broker-

<sup>1</sup> Neither the Index Creator nor the Advisor nor any affiliated person of the Index Creator or the Advisor is or will be registered as a broker or dealer.

dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as principal underwriter for the Funds (the "Distributor").

2. Each Fund seeks to invest in a portfolio of equity securities ("Portfolio Securities") that substantially replicate a particular benchmark (each an "Index" or "Underlying Index" and collectively, the "Indices" or "Underlying Indices"). The Underlying Indices are based on a proprietary, rules-based methodology developed by the Index Creator to define certain segments of the healthcare, life sciences and biotechnology sectors of both domestic and international markets ("Methodology").<sup>2</sup> The Methodology, including the rules which govern the inclusion and weighting of securities in the Underlying Indices, will be publicly available, including on either the Advisor's or the Funds' website ("Web site"), along with the identities and weightings of the component securities of each Index ("Component Securities") and the Portfolio Securities of each Fund.<sup>3</sup> While the Index Creator may change the rules of the Methodology in the future, the Index Creator presently does not intend to do so. Any change to the Methodology would not take effect until the Index Creator had given the public at least 60 days advance notice of the change and had given reasonable notice of the change to the Index Administrator/Calculation Agent. The "Index Administrator/Calculation Agent" is the entity that, pursuant to an agreement with the Index Creator, is solely responsible for all Index calculation, maintenance, dissemination and reconstitution activities.<sup>4</sup> The

<sup>2</sup> Each Underlying Index is developed using an investment approach known as "Vertical Investing," which seeks to categorize companies within a particular healthcare, life sciences or biotechnology index by focusing on each company's business activities with regard to the diagnosis of diseases, the development of drugs, treatments, therapies and delivery systems, and the development of enabling/research tools and technologies for use in these sectors.

<sup>3</sup> The Index Creator, as owner of the Indices and all intellectual property related to them, intends to license the Indices to the Advisor for use in connection with the Funds. The license will specifically state that the Advisor must provide the use of the Indices to the Funds at no cost.

<sup>4</sup> The Index Administrator/Calculation Agent will determine the number, type and weight of securities that comprise each Index and perform, or cause to be performed, all other calculations that are necessary to determine the proper constitution of each Index. The Index Administrator/Calculation Agent will not disclose any information about any Index's constitution to the Index Creator, the Advisor, the Sub-Advisor or the Funds prior to the publication of such information on the Website. However, the Index Administrator/Calculation Agent may disclose such information solely to certain employees of the Index Creator and its affiliates who will monitor the Methodology and

Administrator/Calculation Agent is not, and will not be, an affiliated person, or an affiliated person of an affiliated person, of the Funds, Advisor, Sub-Advisor, Index Creator, any promoter of the Funds, or the Distributor of the Funds.<sup>5</sup>

3. Applicants state that the Index Personnel will not have any responsibility for the management of the Funds. In addition, applicants have adopted policies and procedures that, among other things, are designed to limit or prohibit communications between the Index Personnel and other employees of the Index Creator and the Advisor or any Sub-Advisor ("Firewalls"). Among other things, the Firewalls prohibit the Index Personnel from disseminating non-public information about the Indices, including potential changes to the Methodology, to, among others, the employees of the Advisor or any Sub-Advisor responsible for managing the Funds ("advisory personnel"). The Firewalls also prohibit the Advisor's and Sub-Advisor's advisory personnel from sharing any non-public information about the management of the Funds with the personnel responsible for creating, monitoring, calculating, maintaining or disseminating the Indices (i.e., Index Personnel and the Index Administrator/Calculation Agent). Further, the Advisor and the Sub-Advisor have adopted, pursuant to rule 206(4)-7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. The Advisor, the Sub-Advisor and the Distributor each have adopted or will adopt a Code of Ethics as required under rule 17j-1 under the Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j-1) from engaging in any conduct prohibited in rule 17j-1. In addition, the Advisor and the Sub-Advisor have adopted or will adopt policies and procedures to detect and prevent insider trading as required under section 204A of the Advisers Act, which are reasonably designed, taking into account the nature of their business, to prevent the misuse in violation of the Advisers Act, Exchange Act, or rules and regulations under the Advisers Act and Exchange Act, of material non-public information.

the Indices ("Index Personnel") and to the chief compliance officer of the Funds, the Advisor and the Sub-Advisor for purposes of monitoring compliance with the code of ethics of these entities.

<sup>5</sup> Standard & Poor's ("S&P") will serve as Index Administrator/Calculation Agent for the Underlying Indices.

4. Any Future Fund will be advised by the Advisor or an entity controlled by or under common control with the Advisor. Applicants will not offer a Future Fund unless either they have requested and received with respect to such Future Fund exemptive relief from the Commission or a no-action position from the staff of the Commission, or the Future Fund will be listed on an Exchange without the need for a filing under rule 19b-4 under the Exchange Act. In addition, any Future Fund that relies on any order granted pursuant to this application will comply with the terms and conditions of the application, including the following: (a) The Methodology will be publicly available, including on the Website; (b) once the rules of the Methodology are established, applicants may change them only after giving the public at least 60 days advance notice of any change; (c) applicants have Firewalls; (d) the Index Administrator/Calculation Agent will not be an affiliated person, or an affiliated person of an affiliated person, of the Funds, Advisor, Sub-Advisor, Index Creator, Distributor or promoter of the Funds; and (e) the Indices will be reconstituted on a fixed periodic basis no more frequently than quarterly.

5. The investment objective of each Fund will be to provide investment results that track the performance, before fees and expenses, of a particular Underlying Index. The intra-day value of each Index will be disseminated every 15 seconds throughout the trading day over the Consolidated Tape on each day that the Funds are open, which includes any day that the Funds are required by to be open under section 22(e) of the Act ("Business Day"). In seeking to achieve its investment objective, each Fund will utilize either a replication or a representative sampling strategy. A Fund using a replication strategy generally will invest in the Component Securities in its Underlying Index in approximately the same weightings as in the Underlying Index. In certain circumstances, such as when a Component Security is illiquid or there are practical difficulties or substantial costs involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy pursuant to which it will invest in some but not all of the Component Securities.<sup>6</sup> Applicants

<sup>6</sup> Each Fund will invest at least 90% of its assets in Component Securities. Each Fund may invest up to 10% of its assets in securities that are not Component Securities, but which the Advisor or Sub-Advisor believes will help the Fund track its Underlying Index, including futures, options and swap contracts, cash and cash equivalents. Certain

anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5%.

6. Shares of the Funds will be sold at a price of between \$40 and \$250 per Share in Creation Units of 50,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant," an entity that has entered into an agreement with the Distributor and that is either (a) A participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission or (b) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash, though a Fund may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a "Creation Deposit" consisting of: (a) A portfolio of securities that has been selected by the Advisor or Sub-Advisor to correspond generally to the performance of the relevant Index ("Deposit Securities"); and (b) a cash payment to equalize any differences between the market value of the Deposit Securities per Creation Unit and the net asset value ("NAV") per Creation Unit ("Cash Requirement").<sup>7</sup> An investor purchasing a Creation Unit from a Fund

Funds may invest in American Depositary Receipts or Global Depositary Receipts (collectively, "Depositary Receipts") based on securities of foreign companies in the Underlying Index. A Fund would treat Depositary Receipts that represent Component Securities of its Underlying Index as Component Securities for purposes of any requirements related to the percentage of Component Securities held by a Fund.

<sup>7</sup> On each Business Day, prior to the opening of trading on the Exchange, the Advisor or Sub-Advisor will make available the list of the names and the required number of shares of each Deposit Security required for the Creation Deposit for the Fund. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit for the Fund is announced. Each Fund reserves the right to permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities. The Exchange will disseminate every 15 seconds throughout the trading day over the Consolidated Tape an amount representing, on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Requirement.

will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.<sup>8</sup> Each Fund will disclose the maximum Transaction Fee in its prospectus ("Prospectus") and the method of calculating the Transaction Fee in its statement of additional information ("SAI"). No sales charges for purchases of Creation Units of any Fund are contemplated. The Corporation is authorized to implement a plan under rule 12b-1 under the Act for each of the Funds, which will be disclosed in the Fund's Prospectus, if implemented.

7. Orders to purchase Creation Units of a Fund will be placed with the Distributor who will be responsible for transmitting orders to the Funds. The Distributor will maintain a record of Creation Unit purchases. The Distributor will be responsible for issuing confirmations of acceptance and furnishing Prospectuses to purchasers of Creation Units.

8. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on an Exchange and traded in the secondary market in the same manner as other equity securities. It is expected that one or more members of the Exchange will act as a specialist ("Specialist"), and maintain a market on the Exchange for the Shares. The price of Shares traded on an Exchange will be based on a current bid/offer market. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. The Specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.<sup>9</sup> Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually

<sup>8</sup> When a Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the brokerage and other transaction costs incurred by the Fund to purchase the requisite Deposit Securities.

<sup>9</sup> Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting the beneficial owners of Shares.

purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

10. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) A portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted ("Redemption Securities"), and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Requirement. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor will pay a Transaction Fee, which is calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

11. Applicants state that neither the Corporation nor any Fund will be marketed or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund will be marketed as an "exchange-traded fund," "investment company," "fund," or "trust." All marketing materials that refer to redeemability or describe the method of obtaining, buying or selling Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in the Prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

#### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 24(d) of the Act and rule 22c-1 Under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Corporation to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

*Section 22(d) of the Act and Rule 22c-1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market

trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that the provisions of section 22(d), as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) Secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

*Section 24(d) of the Act*

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>10</sup>

<sup>10</sup> Applicants state that they do not seek relief from the prospectus delivery requirement for non-

8. Applicants state that Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be exchange-listed, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on computer screens of brokers and other electronic services. The previous day's closing price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Web site will include, for each Fund, the prior Business Day's NAV, the mid-point of the bid-ask spread for a Share at the time of calculation of the NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the closing price against such Bid/Ask Price, as well as data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

9. Investors also will receive a short product description ("Product Description"), describing a Fund and its

secondary market transactions, such as purchases of Shares from the Funds or an underwriter. Applicants state that the Prospectus will caution persons purchasing Creation Units that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares and sells them directly to its customers, or if it chooses to couple the creation of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market. The Product Description will prominently disclose that the Indexes are created and sponsored by an affiliated person of the Advisor.

*Sections 17(a)(1) and (2) of the Act*

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

11. Applicants request an exemption from section 17(a) to the extent necessary to permit (a) persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of the Shares of a Fund ("First-Tier Affiliates") and (b) affiliated persons of First-Tier Affiliates who are not otherwise affiliated with the Fund, and persons who are affiliated persons of a Fund solely by virtue of holding with the power to vote 5% or more, or more than 25%, of the outstanding voting securities of other registered investment companies (or series thereof) advised by the Advisor ("Second-Tier Affiliates") to purchase and redeem Creation Units through in-kind purchases and sales of securities. Applicants contend that no useful purpose would be served by prohibiting the First- and Second-Tier Affiliates from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the Portfolio Securities. Therefore, applicants state, the in-kind purchases and redemptions for which relief is requested will afford no opportunity for the affiliated persons of a Fund, or the affiliated persons of such affiliated persons, described above, to effect a transaction detrimental to

other holders of Shares. Applicants also believe that these in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

**Applicants' Conditions**

Applicants agree that any order granting the requested order will be subject to the following conditions:

1. Applicants will not register a Future Fund by means of filing a post-effective amendment to the Corporation's registration statement or by any other means, unless either (a) Applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. As long as the Corporation operates in reliance on the requested order, the Shares will be listed on an Exchange.

4. Neither the Corporation nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site maintained for the Corporation, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the

NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the website for the Fund has information about the premiums and discounts at which the Shares have traded.

6. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E6-19666 Filed 11-20-06; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54747; File No. SR-BSE-2006-51]

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

November 14, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with

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

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