

change as a result of the proposed substitutions.

### Conclusion

Applicants assert that, for the reasons summarized above, the substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24344; 812-11430]

### Equity Investor Fund, et al.; Notice of Application

March 21, 2000.

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

**ACTION:** Notice of an application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(f)(ii) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** The requested order would permit certain unit investment trusts ("UITs") relying on section 12(d)(1)(f) of the Act to offer units with a sales load in excess of the limit in section 12(d)(1)(f)(ii) of the Act. In addition, the requested order would permit a terminating series of a UIT to sell certain investment company shares to a new series of the UIT.

**APPLICANTS:** Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Salomon Smith Barney Inc., Dean Witter Reynolds Inc. and Paine Webber Incorporated (collectively, the "Sponsors"); and the Equity Investor Fund ("EIF").

**FILING DATES:** The application was filed on December 10, 1998 and amended on April 20, 1999 and March 7, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**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 April 17, 2000, 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, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicants, P.O. Box 9051, Princeton, NJ 08543-9051.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942-0574 or George J. Zornada, Branch Chief, at (202) 942-0564, (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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. EIF is registered under the Act as a UIT and is sponsored by one or more of the Sponsors. EIF consists of multiple series ("Series"), each created by a trust indenture between the Sponsors and a financial institution that satisfies the criteria of section 26(a) of the Act (the "Trustee"). Each Sponsor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Applicants request relief for each subsequently-issued Series and for any future registered UIT that is sponsored by one or more of the Sponsors and which becomes party to the trust indenture.

2. Each Series will contain a portfolio of equity securities ("Fund Shares") issued by registered investment companies that are not affiliated with any of the applicants (the "Funds"). The Funds may be closed-end investment companies ("Closed-end Funds"), open-end investment companies ("Open-end Funds"), UITs or investment companies that are registered under the Act as open-end investment companies or UITs but have received exemptive relief under the Act to permit their shares to trade at negotiated prices on a national securities exchange ("Exchange-Traded Funds"). The Sponsors will deposit Fund Shares in a Series at the Fund Shares' net asset value (in the case of

Open-end Funds and UITs) or at their market value (in the case of Closed-end Funds and Exchange-Traded Funds). Market value will be a Fund's closing sale price on a national securities exchange or the Nasdaq National Market System ("Nasdaq-NMS") or, if unavailable, at the closing ask prices as determined by the Trustee.

3. Simultaneously with the deposit of Fund Shares, the Trustee will deliver to the Sponsors units ("Units") which represent the entire ownership of the Series. These Units will in turn be offered for sale to the public by the Sponsors. The Units will be offered at prices based on the aggregate value of the Fund Shares deposited (plus any cash, receivables (including dividends receivable) and any other assets of the Series less accrued liabilities), plus a sales charge and organization costs. The sales charges on the Units will not, when aggregated with any sales charge, distribution fees and service fees paid by the Series with respect to Fund Shares, exceed the limits set forth in rule 2830 of the NASD's Conduct Rules. Although a Series may invest in a Fund with an asset-based sales charge exceeding .25% of the Fund's average net assets, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series and used to reduce the Series' expenses.

4. The portfolios of certain Series may be selected based on an asset allocation model or other selection criteria, which the investment strategy requires to be reapplied periodically. These Series ("Rollover Series") may terminate approximately one or two years after they are offered for sale. At that time, the Sponsors intend to create and offer a new Series ("New Series"), the portfolio of which will reflect the current asset allocation model or reapplication of the selection process and may contain the same Fund Shares as the Rollover Series. Investors in the Rollover Series may elect to invest in the New Series.

5. Applicants request relief to permit a Rollover Series to sell Fund Shares to the New Series. In order to minimize the potential for overreaching, Merrill Lynch as agent for the Sponsors will certify in writing to the Trustee, within five days of each sale of Fund Shares from a Rollover Series to a New Series: (a) That the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statement and reports filed under the Act, (b) the date of the transaction, and (c) the net asset value of the Fund in the case of an Open-end Fund or UIT, or the closing sale price on a national securities

exchange or Nasdaq-NMS in the case of a Closed-end Fund or Exchange Fund. The Trustee will then countersign the certificate unless, in the event the Trustee disagrees with a price listed on the certificate, the Trustee immediately informs Merrill Lynch orally of any such disagreement and return the certificate within five days to Merrill Lynch with corrections duly noted. Upon Merrill Lynch's receipt of a corrected certificate, Merrill Lynch and the Trustee will jointly determine the correct closing sale price by reference to a mutually agreeable, published list of prices for the date of the transaction.

### Applicants' Legal Analysis

#### A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and all affiliated persons of the acquiring company, and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in Fund Shares in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Series relying on

section 12(d)(1)(F) to offer Units with a sales load in excess of 1.5%. For the reasons stated below, applicants believe that the requested relief meets the standards of section 12(d)(1)(J).

4. While each Series may charge a sales load, the Sponsors will deposit the Fund Shares at net asset value (*i.e.*, without any sales charge). To further limit the extent to which unitholders may pay indirectly for distribution costs of the underlying Funds, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series. Applicants also have agreed, as a condition to the requested relief, that any sales charges, distribution related fees, and service fees relating to Units, when aggregated with any sales charges, distribution related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of Fund Shares, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F). As a result, the aggregate sales charges will not exceed the limit that otherwise could be charged at any single level.

#### B. Section 17(a) of the Act

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Applicants submit that the Series may be deemed to be affiliated persons of one another by virtue of being under common control because they have one or more common Sponsors. The Series therefore may be unable to sell and purchase Fund Shares to and from each other without an exemption from section 17(a) of the Act. Accordingly, applicants request relief to permit a Rollover Series to sell Fund Shares to a New Series ("Rollover Transactions").

2. Section 17(b) of the Act permits the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the

protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the terms of the Rollover Transactions meet the standards of sections 6(c) and 17(b) of the Act.

3. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having a common investment adviser, directors, and/or officers, to purchase securities from or to sell securities to one another, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraphs (b) and (e).

4. Rule 17a-7(b) requires that the transactions be effected at the independent current market price of the security. Shares of Open-end Funds and UITs would fall within the category of "all other securities" in paragraph (b)(4) of the rule, for which the current market price under rule 17a-7(b) is the average of the highest current independent bid and the lowest current independent offer determined on the basis of reasonable inquiry. Applicants state that shares of Open-end Funds and UITs do not trade at a bid or offer price but at an independently-determined net asset value.

5. Rule 17a-7(e) requires an investment company's board of directors to adopt and monitor procedures for transactions effected pursuant to the rule to assure compliance with the rule. Because a UIT does not have a board of directors, applicants state that there can be no board review of the Rollover Transactions.

6. Applicants submit that engaging in Rollover Transactions will not disadvantage either the Rollover Series or the New Series. Applicants note that Rollover Transactions may reduce costs to unitholders of the Series. In addition, the Rollover Transactions will be consistent with the policy of each Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the Rollover Transactions.

### Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to the Units, when aggregated with any

sales charges, distribution-related fees and service fees paid by a Series relating to its acquisition, holding or disposition of Fund Shares, will not exceed the limits set forth in rule 2830(d) for the NASD Conduct Rules.

3. Each sale of Fund Shares between the Series will be effected at the net asset value of the Fund Shares as determined by the Fund on the sale date or, if traded on a national securities exchange or Nasdaq-NMS, the closing sale price on the sale date. Such sales will be effected without any brokerage commissions or other remuneration except customary transfer fees, if any.

4. The nature and conditions of such transactions will be disclosed to investors in the prospectus of each Series.

5. The Trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of Fund Shares from a Rollover Series and the purchase of Fund Shares for deposit in a New Series and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a), (c) and (d) of rule 17a-7.

6. A written copy of these procedures and a written record of each transaction effected pursuant to the requested order will be maintained as provided in rule 17a-7(f).

7. No Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

8. No Series will terminate within 30 days of the termination of any other Series that holds shares of one or more common Funds.

9. The prospectus of each Series and any sales literature or advertising that mentions that existence of an in-kind distribution option will disclose that unitholders who elect to receive Fund Shares will incur any applicable rule 12b-1 fees.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42543; File No. SR-Amex-99-49]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Investment Series of the iShares<sup>SM</sup> Trust Based on Foreign Stock Indexes

March 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to list the trade under rules 1000A *et seq.* ("Index Fund Shares") series of the iShares<sup>SM</sup> Trust based on stock indexes that consist in whole or part of foreign stocks. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

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

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in section 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

Amex rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an

open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.<sup>3</sup> The Exchange currently lists under Amex rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares<sup>SM</sup> ("WEBS<sup>TM</sup>") based on Morgan Stanley Capital International foreign stock indices;<sup>4</sup> and nine series of Select Sector SPDRs<sup>®</sup> based on Select Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500<sup>®</sup> Index.<sup>5</sup>

The Exchange proposes to list and trade under Amex rules 1000A *et seq.* the following investment series (each a "Fund" and collectively, the "Funds") of the iShares<sup>SM</sup> Trust<sup>6</sup> ("Trust") based on indexes (referred to herein as "Underlying Indices") comprised in whole or part of equity securities issued by foreign issuers as follows: (1) iShares S&P Europe 350 Fund and (2) iShares S&P/TSE 60 Fund.

In addition to the Funds listed above, the Trust's Investment Company Act of 1940 ("1940 Act") exemptive application requests that the exemptive relief sought in the Application apply to Funds (referred to herein as "Additional Funds") based on the following indexes: (1) S&P Euro Index; (2) Dow Jones Global Media Sector Index; (3) Dow Jones Global Pharmaceuticals Sector Index; and (4) Dow Jones Global Telecommunications Sector Index. Funds on these indexes will not be the subject of the Trust's initial registration statement, which will cover, among other Funds,<sup>7</sup> the iShares S&P Europe 350 Fund and the iShares S&P/TSE 60 Fund. The Exchange proposes to list and trade the Additional Funds, listed above, that are the subject of the Trust's 1940 Act exemptive application after an effective registration statement is in place for those funds. All descriptions herein that apply to the two proposed

<sup>3</sup> See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

<sup>4</sup> "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc. See Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

<sup>5</sup> "S&P<sup>®</sup>", "S&P 500<sup>®</sup>" and "SPDRs<sup>®</sup>" are trademarks of The McGraw-Hill Companies, Inc., and "Selected Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc. See Securities Exchange Act Release 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998).

<sup>6</sup> The Trust has filed with the Commission an Application for Orders ("Application") under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the Trust from various provisions of the 1940 Act and Amex Rules thereunder (File No. 812-11598).

<sup>7</sup> See File No. SR-Amex-99-48 for a description of iShares Funds based on indexes composed of stocks traded in the U.S.

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

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