proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CSE–2003–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–14 and should be submitted by January 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30835 Filed 12–11–03; 8:45 am]

BILLING CODE 8010–10–P

[16] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48881; File No. SR–NYSE–2003–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of iShares Lehman U.S. Aggregate Bond Fund and iShares Lehman TIPS Bond Fund

December 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2003 the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 3, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to trade pursuant to unlisted trading privileges (''UTP'') iShares Lehman U.S. Aggregate Bond Fund (the ''Aggregate Bond Fund'') and to list and trade the iShares Lehman TIPS Bond Fund[4] (the ''TIPS Fund'') and together with the Aggregate Bond Fund, (the ''ETFs'' or the ''Funds''), each a series of iShares Trust (the ''Trust''), an exchange traded fund which is a type of Investment Company Unit.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated December 3, 2003 (''Amendment No. 1''). Amendment No. 1 provides for certain technical changes and clarification to the original proposal, particularly settlement and clearance procedures for TIPS Fund.

[4] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

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

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change 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 III below. The NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 703.16 of the NYSE Listed Company Manual provides standards for listing and trading Investment Company Units (''ICUs''), which are securities issued by an open-end management company.[5] The Commission previously approved amendments to section 703.16 of the NYSE Listed Company Manual to accommodate the listing and trading of ICUs based on an index of fixed income securities, but such standards are not generic listing standards. Hence, the NYSE has filed NYSE–2003–39 to accommodate the trading pursuant to UTP of the Aggregate Bond Fund and the listing and trading of the TIPS Fund under section 703.16 of the Listed Company Manual. The Funds have been approved for listing on the Amex.[6]

As set forth in detail below, the Funds will hold certain fixed income securities (the ''Component Securities'') selected to correspond generally to the performance of the relevant Underlying Index (the ''Underlying Index'') and, in the case of the Aggregate Bond Fund will also invest in mortgage pass-through securities through TBA

[5] In 1996, the Commission approved Section 703.16 of the Listed Company Manual (the ''Company Manual''), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Company Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000). In 2002, the Commission approved amendments to Section 703.16 of the Company Manual to accommodate the listing of ICUs based on an index of fixed income securities. *See* Securities Exchange Act Release No 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002).

[6] *See* Securities Exchange Act Release No. 48534 (September 24, 2003), 68 FR 56353 (September 30, 2003).

transactions, in each instance as described in *Exhibit A* to NYSE–2003–39. The ETFs intend to qualify as a ''regulated investment company'' (the ''RIC'') under the Internal Revenue Code (the ''Code'').

Barclays Global Fund Advisors (the ''Advisor'' or the ''BGFA'') is the investment advisor to the ETFs. The Advisor is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. (the ''BGI''), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom.

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

Administrator/Custodian/Fund Accountant/Transfer Agent/Dividend Disbursing Agent. The Trust has appointed Investors Bank & Trust Co. (the ''IBT'') to act as administrator (the ''Administrator''), custodian, fund accountant, transfer agent, and dividend disbursing agent for the ETFs. The performance of their duties and obligations will be conducted within the provisions of the Advisers Act and the rules thereunder. There is no affiliation between IBT and the Trust, the Advisor or the Distributor.

a. *Operation of the ETFs.* The investment objective of each ETF will be to provide investment results that correspond generally to the performance of its Underlying Index. In seeking to achieve its investment objective, the ETFs will utilize ''passive'' indexing investment strategies. Each ETF may fully replicate is Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities (the ''Component Securities'') of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to an ETF that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same appropriate proportions as in the Underlying Index).[7] The representative sampling techniques that will be used by the Advisor to manage the Aggregate Bond Fund and the TIPS do not differ from the representative sampling techniques it uses to manage the Funds that were the subject of the Commission's June 25, 2002 order under the 1940 Act relating to other series of the iShares Trust indexes of fixed income securities.[8]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of an ETFs portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogenous pieces. These subdivisions are sometimes referred to as ''cells.'' A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) Sector, (3) Credit Rating, (4) Coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.

According to the Original Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information, (*e.g.,* coupon rates instead of dividend payments).

According to the Original Application, the ETFs' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are ''expensive names'' (*i.e.,* bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each ETF in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a RIC under the Code. For example, if at the end of a calendar quarter an ETF would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange represents that the Advisor[9] expects that each Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each ETF's investment objectives, policies and investment strategies will be fully disclosed in its prospectus (''Prospectus'') and statement of additional information (''SAI''). The TIPS Fund will invest at least 90% of its assets in Component Securities of its Underlying Index. The TIPS Fund may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the TIPS Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, the TIPS Fund may invest in securities not included in the Underlying Index in order to reflect prospective changes in the Underlying Index (such as future corporate actions and index

[7] The Trust, Advisor and Distributor (the ''Applicants'') have filed with the Commission an Application for an Amended Order (the ''Application'') under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940'') for the purpose of exempting the ETFs from various provisions of the 1940 Act. (File No. 812–13003). A notice of Application was issued in Investment Company Act Release No. 26151, August 5, 2003. The information provided herein relating to the Funds is based on information regarding the Trust and the Finds/ *See* Investment Company Act Release No. 25622 (June 25, 2002) for the approval of the initial Application for additional series of the iShares Trust based on indexes of fixed income securities (the ''Original Application'').

[8] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003. *See* in the Matter of iShares Trust, et al., Investment Company Act Release; No. 25622 (June 25, 2002) (relating to the iShares 1–3 Year Treasury Index Fund, 7–10 Year Treasury Index Fund, 20+Year Treasury Index Fund, Treasury Index Fund, Government/Credit Index Fund, Lehman Corporate Bond Fund and GS$InvesTop Corporate Bond Fund).

[9] *See supra* note 3.

reconstitutions, additions and deletions).

However, additional portfolio flexibility would benefit the Aggregate Bond Fund, while at the same time permitting it to closely track the performance of its Underlying Index. The Aggregate Bond Fund will: (1) Seek to track the performance of that portion of its Underlying Index comprised of U.S. Treasury securities, U.S. agency securities, corporate bonds, non-corporate bonds (*e.g.,* bonds issued by supra-national entities such as the International Monetary Fund), asset-backed securities, and commercial mortgage-backed securities (approximately 65% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.,* approximately 65%) in the Component Securities of its Underlying Index; [10] and (2) seek to track the performance of that portion of its Underlying Index invested in U.S. agency mortgage pass-through securities (approximately 35% of the Underlying Index as of December 3, 2003) by investing a corresponding percentage of its net assets (*i.e.,* approximately 35%) [11] through TBA transactions (as described below) on U.S. agency mortgage pass-through securities. Through the Aggregate Bond Fund's direct investments in Component Securities of its Underlying Index and its investment in mortgage pass-through securities through TBA transactions, the Aggregate Bond Fund will have at least 90% of its net assets invested (i) in Component Securities of its Underlying Index and (ii) and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index (*i.e.,* TBA transactions).

According to the Application, the Aggregate Bond Fund needs the investment flexibility to engage in TBA transactions as described above primarily because approximately 35% of the securities in the Aggregate Bond Fund's Underlying Index are expected to be pools of U.S. agency mortgage pass-through securities.[12] As discussed below, it is easier to trade and obtain intra-day prices of TBAs than it is to trade and obtain intra-day prices of specific pools of mortgage pass-through securities. The readily available information about intra-day pricing of TBAs and the ease with which they can be traded should make it easier to create and redeem Creation Unit Aggregations and help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

The Application states that, although the market or mortgage pass-through securities is extremely deep and liquid, it is impractical to trade mortgage pass-through securities on a pool-by-pool basis, particularly when large dollar amounts are involved. For this reason, the vast majority of mortgage pools are traded using ''to-be-announced'' or ''TBA'' transactions. A TBA transaction is essentially a purchase or sale of a pass-through security for future settlement at an agreed upon date.[13] It has been estimated that 90% of mortgage pass-through securities (as measured by total dollar volume) are executed as TBA trades.[14] TBA transactions increase the liquidity and pricing efficiency of transactions in mortgage pass-through securities since they permit similar mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

The Aggregate Bond Fund intends to use TBA transactions to acquire and maintain exposure to that portion of the Underlying Index comprised of pools of mortgage pass-through securities in either of two ways. First, and more commonly, the Aggregate Bond Fund will enter into TBA agreements and ''roll over'' such agreements prior to the settlement date stipulated in such agreements. This type of TBA transaction is commonly known as a ''TBA roll.'' In a ''TBA roll'' the Aggregate Bond Fund generally will sell the obligation to purchase the pools stipulated in the TBA agreement prior to the stipulated settlement date and will enter into a new TBA agreement for future delivery of pools of mortgage pass-through securities. Second, and less frequently, the Aggregate Bond Fund will enter into TBA agreements and settle such transactions on the stipulated settlement date by actual receipt or delivery of the pools of mortgage pass-through securities stipulated in the TBA agreement. Since intra-day-prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism. The Aggregate Bond Fund will accept actual delivery of mortgage pools only when the Advisor believes it is in the best interests of the Aggregate Bond Fund and its shareholders to do so. In determining whether to accept actual delivery of mortgage pools, the Advisor will consider, among other things, the potential impact of such acceptance on the efficiency of the Aggregate Bond Fund's arbitrage mechanism and the Aggregate Bond Fund's ability to track its Underlying Index. For these reasons, the Advisor believes that the ability to invest a significant portion of the Aggregate Bond Fund's assets through TBA transactions and to maintain such exposure through the use of TBA rolls would increase the liquidity and pricing efficiency of the Aggregate Bond Fund's portfolio. In addition, since holding a TBA position exposes the holder to

[10] With respect to this portion of its portfolio, the Aggregate Bond Fund may invest up to 10% of its portfolio in bonds not included in its Underlying Index, but which the Advisor believes will help the Aggregate Bond Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents.

[11] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[12] As used herein, the term ''U.S. agency mortgage pass-through security'' or ''mortgage pass-through security'' refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: the Government National Mortgage Association (''GNMA''), Federal National Mortgage Association (''FNMA'') or Federal Home Loan Mortgage Corporation (''FHLMC''). In the basic pass-through structure, mortgages with similar issuer, term and coupon characteristics are collected and aggregated into a pool. The pool is assigned a CUSIP number and undivided interests in the pool are traded and sold as pass-through securities. The holder of the security is entitled to a pro rata share of principal and interest payments (including unscheduled prepayments) from the pool of mortgage loans. The portion of the Underlying Index representing the mortgage pass-through segment of the U.S. investment grade bond market is comprised of multiple pools of mortgage pass-through securities.

[13] ''TBA'' refers to a mechanism for the forward settlement of agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. TBA trades generally are conducted in accordance with widely-accepted ''Good Delivery'' guidelines published by The Bond Market Association (''TBMA''). The Good Delivery guidelines facilitate transactions in mortgage pass-through securities by establishing commonly observed terms and conditions for execution, settlement, and delivery. In a TBA trade, the buyer and seller decide on general trade parameters, such as agency, coupon, term to maturity, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. TBA transactions promote efficient pricing because the Goog Delivery guidelines permit only a small variance between the face amount of the pools actually delivered and the nominal agreed upon amount. Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg L.P. (''Bloomberg'') and Trade Web. TBMA publishes standard notification and settlement dates for TBA trades specifying uniform settlement dates for specific classes of securities. The most active trading market for TBA trades is usually for next-month settlement. *See* generally *TBAs: To-Be-Announced Mortgage Securities Transactions,* TBMA (1999).

[14] *Id.* at 3.

substantially identical market and economic risks as holding a position in a corresponding pool of mortgage pass-through securities, the Advisor believes that the use of TBA transactions as described herein should permit the Aggregate Bond Fund to closely track the performance of its Underlying Index.

The use of TBA transactions is not intended to help the Aggregate Bond Fund ETF outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index.

b. *Issuance of Creation Unit Aggregations.*

1. *In General.* The issuance of Creation Unit Aggregations will operate, except as noted below, in a manner identical to that of the ETFs described in the Original Application.[15] Shares of each ETF (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The ETFs will issue and redeem iShares only in Creation Unit Aggregations.[16] As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received. The anticipated price at which both Funds will initially trade on the NYSE is approximately $100. The NYSE represents that the Aggregate Bond Fund is currently trading at $100.82 on the Amex as of December 3, 2003.[17]

The NAV per share of each ETF is determined as of the close of the regular trading session on the NYSE on each day that the NYSE is open. The Trust sells Creation Unit Aggregations of each ETF only on business days at the next determined NAV of each ETF.

Creation Unit Aggregations will be issued by each ETF in exchange for the in-kind deposit of portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the ETF's Underlying Index (the ''Deposit Securities''). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each ETF in exchange for portfolio securities of the applicable ETF (the ''Fund Securities'') and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each ETF. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant (the ''Authorized Participant''). Authorized Participants, which are required to be Depository Trust Company (''DTC'') participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable ETF and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the Prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the ETF of the Deposit Securities together with an amount of cash (the ''Balancing Amount'') specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the ETF and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Portfolio Deposit.''

The Advisor will make available to the market through the National Securities Clearing Corporation (the ''NSCC'') on each Business Day, prior to the opening of trading on the Exchange (currently 9:30 a.m. eastern time), the list of the names and the required number of shares of each Deposit Security in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant Fund. The Portfolio Deposit will be applicable to an ETF (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the ETF until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each ETF will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant ETF, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each ETF to permit or require the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

The Aggregate Bond Fund may invest in and hold mortgage pass-through securities on a TBA basis. Since a TBA transaction is essentially an agreement for future settlement of a mortgage security, it is not possible to accept TBAs as part of the Portfolio Deposit. Instead, the Aggregate Bond Fund will designate the mortgage pass-through TBAs to be included in a Portfolio Deposit just as it would any other Deposit Securities of a Portfolio Deposit, and will accept ''cash in lieu'' of delivery of the designated mortgage pass-through TBAs. The Aggregate Bond Fund will then enter into TBA agreements included as Deposit Securities in the Portfolio Deposit.[18]

[15] *See* Investment Company Act Release No. 25622 (June 25, 2002). Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 2, 2003.

[16] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

[17] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[18] Prior to settlement of such TBA transactions, the ''cash in lieu'' portion of the Portfolio Deposit

According to the Application, this will substantially minimize the Aggregate Bond Fund's transaction costs, enhance operational efficiencies and otherwise reduce any operational issues which the acceptance of pools of mortgage pass-through securities might otherwise present.[19]

c. *Availability of Information Regarding iShares and Underlying Indices.* On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the ''Intra-day Optimized Portfolio Value'' or the ''IOPV'') will be calculated by independent third parties (such as Bloomberg) every 15 seconds during the NYSE's regular trading hours and disseminated by the NYSE every 15 seconds on the Consolidated Tape.[20] The IOPV will be updated throughout the day to reflect changing bond prices, as well as TBA prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of the each Fund is readily available to the marketplace.[21] Applicants represent that (1) IOPV will be calculated by an independent third party; (2) IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (3) IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond ''price'' based on an analysis of multiple pricing sources is obtained for each security in the Portfolio Deposit.[22] Closing prices of the ETFs' Deposit Securities are readily available from published or other public sources, such as the NYSE's Automated Bond System (ABS®), the Trace Reporting and Compliance Engine (''TRACE''), or on-line client-based information services provided by Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, IDC, Merrill Lynch, Bridge, Bloomberg, TradeWeb and other pricing services commonly used by bond mutual funds.[23]

The Indices underlying the Aggregate Bond Fund will not be calculated or disseminated intra-day because Lehman Brothers does not calculate or disseminate intra-day values for these indices. The value and return of the underlying Lehman Index is calculated and disseminated each business day, at the end of the day, by Lehman Brothers.[24]

Each Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each Fund will be calculated and disseminated daily. There will also be disseminated a variety of data with respect to each Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior Business Day's NAV and the mid-point of the bid-ask price[25] at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) 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.[26]

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will be invested in cash equivalents, including money market mutual funds, and such investments, along with cash and other liquid assets identified by BGFA, will be segregated on the books and records of the Aggregate Bond Fund or its Custodian in accordance with Section 18 of the 1940 Act and Investment Company Act Release No. 10666. Since the price of a TBA transaction includes an assumed rate of return on the cash held in anticipation of settlement, the Aggregate Bond Fund's investment in cash equivalents prior to settlement is not expected to have a material impact on potential tracking error or the Aggregate Bond Fund's ability to track its Underlying Index. In addition, since the interest or dividends that the Aggregate Bond Fund accrues on a daily basis on its investment in cash equivalents will be relatively small and will be included as part of the Cash Component published on a daily basis according to the procedures currently used for the ICUs, Applicants expect that such dividends and interest will be reflected in the secondary market trading price of iShares of the Aggregate Bond Fund. The Commission's order relating to the Original Application permits acceptance of a ''cash in lieu'' amount to replace Deposit Securities that are unavailable for delivery or for other reasons. In addition, prior iShares orders expressly permit ''cash-only purchases of Creation Unit Aggregations'' where the Advisor believes such transactions would ''substantially minimize * * * transaction costs or would enhance * * * operational efficiencies.'' *See* Investment Company Act Release No. 24452 (May 12, 2000).

[19] Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and TradeWeb. In addition, the fungible nature of TBAs and commonly observed execution and settlement procedures create significant pricing efficiencies and market liquidity for TBAs. TBAs typically trade at very narrow spreads on transactions of up to $300 million or more. Since intra-day pricing of TBAs is readily available and the market for mortgage pass-through TBAs is extremely liquid, the designation of TBAs in the Portfolio Deposit and their inclusion as Fund Securities should make pricing of the Aggregate Bond Fund and the Deposit Amount more efficient and transparent, thus increasing arbitrage efficiency.

[20] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[21] Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the ETF's IOPV calculation. For example, intra-day prices for treasury securities, agency securities and TBAs are available from Bloomberg, TradeWeb, ABS® and TRACE. Intra-day prices for inflation protected public obligations of the U.S. Treasury are available from Bloomberg and TradeWeb. Intra-day prices of callable agency securities are available from TradeWeb. Intra-day prices of corporate bonds are available from ABS® and TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse First Boston, Goldman Sachs and Lehman Brothers). *See supra* note 6.

[22] For example, Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

[23] The Exchange understands that Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge and Bloomberg provide prices for each type of Deposit Security. TradeWeb provides prices for each type of Deposit Security except mortgage backed securities and corporate bonds. ABS® and TRACE provide prices for corporate bonds. Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[24] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy, LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

[25] The Bid-Ask Price of each ETF is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each ETF's NAV.

[26] The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems. *See,* ''eCommerce in the Fixed-Income Markets: The 2001 Review of Electronic Transaction Systems,'' December 2001. This survey of electronic trading systems in the bond market was prepared by the staff of The Bond Market Association and is available through the Association's Web site: *www.bondmarkets.com.*

The primary dealers are among the most active participants in the secondary market for Treasury

Continued

d. *Redemption of iShares.* Creation Unit Aggregations of each fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the"Creation List") and which a redeemer will receive from the Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.[27]

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. *Clearance and Settlement.*[28] In order to simplify the creation and redemption process and align the settlement of iShares of the Fund with the settlement of the Deposit Securities and Fund Securities (*i.e.,* the underlying U.S. Government securities, corporate and other bonds) contributed or received in connection with creation and redemption transactions, Applicants plan to settle transactions in Deposit Securities and Fund Securities and iShares on the same settlement cycle. (For the sake of clarity, the Exchange notes that transactions in iShares in the secondary market will generally settle on T + 3).[29] The Deposit Securities and Fund Securities of each fund will settle via free delivery through the Federal Reserve System for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (generally T + 3 for the Aggregate Bond Fund and T + 1 for the TIPS Fund), an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. Each Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the Fund's Custodian through DTC, the trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On settlement

securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker (*e.g.*, BrokerTec Global, Cantor Fitzgerald, Garban-Intercapital, and Liberty Brokerage). The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX, for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors do have access to free intra-day bellwether quotes. Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.* TBMA provides links to price and other bond information sources on its investors Web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

[27] Investors redeeming Creation Unit Aggregations of the Aggregate Bond Fund will receive cash for any Component Securities that are mortgage pass-through TBAs.

[28] *See supra* note 3.

[29] Telephone conversation between Janet Kissane, Milbank, Tweed, Hadley & McCloy LLP, Counsel for NYSE, and Florence Harmon, Senior Special Counsel, Division, Commission dated December 4, 2003.

date, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an ''in-kind'' creation of iShares. In case of a failed delivery of one or more Deposit Securities, the Funds will hold the collateral until the delivery of such Deposit Security. The Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the Funds will be protected from failure to receive Creations Unit Aggregations of iShares because the Custodian will not new effect the Funds's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations.

The Exchange represents that according to the Application and the Advisor, the clearance and settlement process will not affect the arbitrage of iShares of the Funds.

f. *Dividends and Distributions.* Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each Fund. Certain of the Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers my make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. *Other Issues.*

1. *Criteria for Initial and Continued Listing.* iShares are subject to the criteria for initial and continued listing of Investment Company Units in Section 703.16 of the Manual. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading on the NYSE. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of investment Company Units.

The NYSE believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Underlying Index.

2. *Original and Annual Listing Fees.* The NYSE's original listing fees that would be applicable to each Fund if listed on the Exchange is $5,000, and the continuing fees would be $2,000. The TIPS Fund will list on the NYSE.

3. *Stop and Stop Limit Orders.* Commentary .30 to NYSE Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more that 0.10 points away from the list sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to Investment Company Units generally, including fixed income ETFs.

4. *NYSE Rule 460.10.* NYSE Rule 460.10 generally precludes certain business relationships between an issuer and specialist in the issuer's securities. Exceptions in the Rule permit specialists in ETF shares, including fixed income ETFs, to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares; provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit, or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

5. *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the 1940 Act.[30] Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The NYSE, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds.

6. *Trading Halts.* In order to halt the trading of an ETF, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in ETF shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

[30] *See* Investment Company Act Release No. 25623 (June 25, 2002).

7. *Suitability.* Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in ETF shares, including fixed income ETFs, such member or member organization should make a determination that such shares are suitable for such customer. If any recommendation is made with respect to such shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction. In the Exchange's Information Circular references above, the Exchange will inform members and member organizations of the requirements of NYSE Rule 405.[31]

8. *Purchases and Redemptions in Creation Unit Size.* In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the relevant Fund Prospectus and SAI, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. *Surveillance.* Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Investment Company Units currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Through its member organizations and otherwise through its membership in the Intermarket Surveillance Group, the Exchange is able to obtain information regarding trading on any U.S. market in both the Funds and the Component Securities.

If a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the underlying Index, it would be required to erect and maintain a ''Fire Wall'' designed to prevent the flow of information regarding the underlying index from the index production personnel and index calculation personnel to the sales and trading personnel. In the course of member organization examinations,[32] the Exchange will examine and test the broker-dealer's ''Fire Wall'' procedures to determine whether they are reasonably designed to prevent the misuse of material non-public information by sales and trading personnel that originates from index production personnel and calculation personnel.

10. *Hours of Trading/Minimum Price Variation.* The Fund will trade on the Exchange until 4:15 p.m. (eastern time). The minimum price variation for quoting will be $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[33] in general, and furthers the objectives of section 6(b)(5) of the Act,[34] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. NYSE–2003–39. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commisson and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2003–39 and should be submitted by January 5, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Act[35] and the rules and regulations thereunder applicable to a national securities exchange.[36] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act.[37] The Commission believes that the availability of the Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying fixed income indices. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities.

Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[31] *See supra* note 3.

[32] The Exchange will examine the member organization's procedures for the first two years after the listing of the ETF and thereafter periodically based on its assessment of risk in planning the annual examination.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f.

[36] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] *Id.*

general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[38]

The Commission has granted the Funds appropriate relief under various Sections of the 1940 Act, including sections 6(c) and 17(b), so that each Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of the Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[39]

The Commission notes that the Funds will operate in substantially the same manner as the funds that were the subject of the Previous Approval Order. The Commission notes one difference is that with respect to the Aggregate Bond Fund, approximately 35% of its assets will be invested in TBA transactions, which is a purchase or sale of a pass-through security for future settlement at an agreed upon date. The Exchange represented that the use of TBA transactions is not intended to help the Aggregate Bond Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Aggregate Bond Fund's exposure to its Underlying Index. Since the intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid that TBA agreements, the Commission agrees that the use of TBA agreements should help maintain the efficiency of the Aggregate Bond Fund's arbitrage mechanism.

For the reasons stated in the Notice, above, the Commission finds that adequate rules and procedures exist to govern the trading of ICUs, including the Funds. For the reasons stated in the Notice, above, the Commission finds that because of the nature of the particular fixed income securities to be included in the portfolios of the Funds (*i.e.,* U.S. Government securities, investment grade corporate bonds, and TBA transactions), the pricing information should be available. However, the Commission notes that differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the Funds than have been experienced by Equity ETFs because arbitrators may wait for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions. The Commission expects the Exchange to contact Commission staff if the tracking error for these Funds exceeds the represented 5%.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in ETF shares without delivery a prospectus to the purchaser.[40] Instead, under the exemption and under NYSE's listing standards, sales in the secondary market must be accompanied by a ''product description,'' describing the ETF and its shares.[41] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Funds from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any EFT under section 703.16 of the NYSE Listed Company Manual the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, fixed income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 405 (''know your customer rule'') regarding transactions in such fixed income ETFs. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer when a transaction in the Fund shares is recommended and determine that such shares are suitable for such customer.[42] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with section 6(b)(5) of the Act.[43]

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based. Lehman has represented that it has procedures in place to prevent the misuse of material, non-public information relating to the index.[44] The Commission believes that these provisions should help to address concerns raised by Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the NYSE has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Funds will trade on the Exchange in the same manner as the funds that were the subject of the Previous Approval Order and the proposed rule change. The proposed rule change raises no novel issues. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

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[38] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[39] Investment Company Act Release No. 25622 (June 25, 2002).

[40] *See* Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

[41] Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks (''ECNs'') would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of Funds.

[42] NYSE Rule 405.

[43] 15 U.S.C. 78f(b)(f).

[44] The Commission expects that the procedures implemented by Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

It is Therefore ordered, pursuant to section 19(b)(2) of the Act [45] that the proposed rule change (SR–NYSE–2003–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30840 Filed 12–12–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48883; File No. SR–PCX–2003–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Implementation of a Closing Auction for the Archipelago Exchange and the Establishment of Market-on-Close and Limit-on-Close Order Types

December 4, 2003.

I. Introduction

On June 2, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Closing Auction and create Market-on-Close (''MOC'') and Limit-on-Close (''LOC'') order types. On October 7, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On October 15, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 22, 2003.[5] On December 2, 2003 the PCX submitted Amendment No. 3 to the proposed rule change.[6]

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, and issues notice of, and grants accelerated approval to, Amendment No. 3.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics,* and proposed deletions are in [brackets].

* * * * *

Text of the Proposed Rule Change: PCX Equities, Inc.

Rule 1 Definitions.

Rule 1.1 (a)–(p)—(No change.)

Imbalance

(q) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be,

(1) the term ''Imbalance'' shall mean the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time.

(A) the term ''Total Imbalance'' shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term ''Market Imbalance'' shall mean*:*

(i) as it relates to the Market Order Auction, the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(ii) as it relates to the Closing Auction, the imbalance of any remaining buy (sell) Market-on-Close Orders that are not matched for execution during the applicable auction.

Indicative Match Price

(r) For the purposes of the Opening Auction, the Market Order Auction, *the Closing Auction* and the Trading Halt Auction, as the case may be, the term ''Indicative Match Price'' shall mean for each security (1) the price at which the maximum volume of shares are executable; or (2) if there are two or more prices at which the maximum volume of shares are executable, the price that is closest to the closing price of the previous trading day's normal market hours (or, in the case of a *Closing Auction or a* Trading Halt Auction, the last sale during normal market hours), as determined by the [C]*c*onsolidated [T]*t*ape will establish the opening price *(or the closing price in the case of a Closing Auction)*, provided that if such price would trade through an eligible Limited Price Order designated for such auction, then the opening price will occur at the best price level available where no trade through occurs.

(s) The term ''Limited Price Order'' shall mean any order with a specified price or prices (e.g., limit orders, *Limit-on-Close Orders,* and Working Orders), other than Stop Orders.

(t)–(aaa)—(No change.)

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Rule 7 Equities Trading—Orders and Modifiers

Rule 7.31 (a)–(cc)—(No change.)

(dd) Market-on-Close Order (''MOC''). A Market Order that is to be executed only during the Closing Auction.

(ee) Limit-on-Close Order (''LOC''). A Limited Price Order that is to be executed only during the Closing Auction.

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Trading Sessions

Rule 7.34 (a)–(c)—No change.

(d) Orders Permitted in Each Session.

(1)—(No change.)

(A)–(H)—(No change.)

(2) During the Core Trading Session[,]*:*

(A) M[m]arket *O*[o]rders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.

(B) Users may enter Market-on-Close Orders, Limit-on-Close Orders, and

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[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 6, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Timothy Fox, Attorney, Division of Market Regulation, Commission, dated October 14, 2003 (''Amendment No. 2''). In Amendment No. 2, the PCX amended proposed PCXE Rule 7.35(g)(1) to clarify that Halt Auctions would be conducted pursuant to proposed PCXE Rules 7.35(g)(2) to (g)(6), and not pursuant to PCXE Rules 7.35(b) and (c), as previously cross-referenced. In addition, the PCX added the phrase ''and an Indicative Match Price does not exist'' to proposed PCXE Rule 7.35(g)(4)(A)(ii) for clarity, and to a related description contained Item 3 and Exhibit 1 to the filing. The PCX added a reference to the Closing Auction in Item 3 and Exhibit 1 for clarity. The PCX also made technical corrections to PCXE Rule 7.35(d)(1) and proposed PCXE Rule 7.35(g)(6).

[5] Securities Exchange Act Release No. 48630 (October 15, 2003), 68 FR 60432.

[6] *See* letter from Mai Shiver, Acting Director, Regulatory Policy, PCX, to Timothy Fox, Division of Market Regulation, Commission, dated December 1, 2003 (''Amendment No. 3''). In Amendment No. 3, the PCX withdrew the Amendment No. 3 that it filed with the Commission on November 19, 2003 and provided that this revised Amendment No. 3 and Exhibit A thereto, replace the original rule text, as amended by Amendments No. 1 and 2. Further, the PCX proposed to incorporate rule text relating to the publication of the Total Imbalance and Market Imbalance that the Commission recently approved. *See* Securities Exchange Act Release No. 48767 (November 10, 2003), 68 FR 65337 (November 19, 2003) (SR–PCX–2003–48). In addition, Amendment No. 3 clarifies that PCX will publish MOC orders that are not matched for execution as the Market Imbalance prior to the Closing Auction. The PCX also proposed to move the Closing Auction from the Late Trading Session to the Core Session, and to change the Closing Auction's start time from 1:02 pm Pacific Time to 1:00 Pacific time. Further, the Amendment clarified that MOC and LOC orders are eligible for execution during the Closing Auction.