

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56324; File No. SR-ISE-2007-72)

August 27, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Options on the iShares Emerging Markets Index Fund for a Six Month Pilot Program

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 August 24, 2007, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. On August 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”). The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to list and trade options on the iShares MSCI Emerging Markets Index Fund for a six month pilot period. ISE is not proposing any changes to the rules of the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this rule change is to obtain approval to list for trading on the Exchange options on the iShares MSCI Emerging Markets Index Fund ("Fund") for a six month pilot period. The Exchange currently has in place initial listing and maintenance standards set forth in ISE Rules 502(h) and 503(h), respectively (the "Listing Standards"), that are designed to allow the Exchange to list funds structured as open-end investment companies such as the Fund without having to file for Commission approval to list for trading options on the fund.⁵ The Exchange submits that the Fund meets substantially all of the Listing Standard requirements, and for the requirements that are not met, sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund.

⁵ ISE Rules 502(h) and 503(h) set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts, or other similar entities that are traded on a national securities exchange or through the facilities of a national securities exchange.

The Fund is an open-end investment company designed to hold a portfolio of securities that tracks the MSCI Emerging Markets Index (“Index”).⁶ The Fund employs a “representative sampling” methodology to track the Index, which means that the Fund invests in a representative sample of securities in the Index that have a similar investment profile as the Index.⁷ Securities selected by the Fund have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation, and yield) and liquidity measures similar to those of the Index. The Fund generally invests at least 90% of its assets in the securities of the Index or in American Depositary Receipts (“ADRs”) and Global Depositary Receipts (“GDRs”) representing such securities. In order to improve portfolio liquidity, give the Fund additional flexibility to comply with the requirements of the U.S. Internal Revenue Code and other regulatory requirements, and to manage future corporate actions and index changes in smaller markets, the Fund also has the authority to invest the remainder of its assets in securities that are not included in the Index or in ADRs and GDRs representing such securities. The Fund may invest up to 10% of its assets in other MSCI index funds that seek to track the performance of equity securities of constituent countries of the Index. The Fund is not permitted to concentrate its investments (i.e., hold 25% or

⁶ As provided on the Web site of Morgan Stanley Capital International Inc. (“MSCI”) (www.msci.com), which is the entity that created and currently maintains the Index, the Index is a capitalization-weighted index whose component securities are adjusted for available float and must meet objective criteria for inclusion in the Index. The Index aims to capture 85% of the publicly available total market capitalization in each emerging market included in the Index. As of August 17, 2007, the Index was comprised of 839 constituents with the top five constituents representing the following weights: 3.63%, 2.52%, 2.01%, 1.96%, and 1.40%. The Index is rebalanced quarterly, calculated in U.S. Dollars on a real time basis, and disseminated every 60 seconds during market trading hours.

⁷ The Fund is comprised of 284 securities as of July 31, 2007. POSCO ADR, a South Korean security, has the greatest individual weight at 4.12%. The aggregate percentage weighting of the top 5, 10, and 20 securities in the Fund are 16.54%, 25.56%, and 40.03%, respectively.

more of its total assets in the stocks of a particular industry or group of industries), except that, to the extent practicable, the Fund will concentrate to approximately the same extent that the Index concentrates in the stocks of such particular industry or group of industries. The Exchange believes that these requirements and policies prevent the Fund from being excessively weighted in any single security, or small group of securities, and significantly reduce concerns that trading in the Fund could become a surrogate for trading in unregistered securities.

Shares of the Fund (“Fund Shares”) are issued in exchange for an “in kind” deposit of a specified portfolio of securities, together with a cash payment, in minimum aggregation size of 150,000 shares (each, a “Creation Unit”), as set forth in the Fund's prospectus. The Fund issues and sells Fund Shares in Creation Unit sizes through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and “in kind,” with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The Exchange notes that the maintenance listing standards set forth in ISE Rule 503(h) for open-end investment companies do not include criteria based on either the number of shares or other units outstanding, or on their trading volume. The absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of manipulation, since

whenever the market price for such shares departs from net asset value, arbitrage will occur. Similarly, since the Fund meets all of the requirements of the Listing Standards except as described below, the Exchange believes that the same analysis applies to the Fund.

The Exchange has reviewed the Fund and determined that it satisfies the Listing Standards except for the requirement set forth in ISE Rule 502(h)((1), which requires the Fund to meet the following condition: “any non-U.S. component stocks in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio.” The Exchange currently has in place surveillance agreements with foreign exchanges that cover 45.97% of the securities in the Fund. One of the foreign exchanges on which component securities of the Fund are traded and with which the Exchange does not have a surveillance agreement is the Bolsa Mexicana de Valores (“Bolsa”). The percentage of the weight of the Fund represented by these securities is 6.53%.

The Exchange understands that the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators in the event that the exchanges themselves cannot enter into a surveillance agreement. The Exchange further understands that the American Stock Exchange (“Amex”) has previously attempted to enter into a surveillance agreement with Bolsa as part of seeking approval to list and trade options on the Mexico Index.⁸ The Chicago Board Options Exchange (“CBOE”) has also previously attempted to enter into a surveillance agreement with Bolsa at or about the time when the CBOE sought approval to list for trading options on the CBOE Mexico 30 Index in 1995, which was comprised

⁸ See Securities Exchange Act Release No. 34500 (August 8, 1994), 59 FR 41534 (August 12, 1994).

of stocks trading on Bolsa.⁹ Since, in both instances, Bolsa was unable to provide a surveillance agreement, the Commission previously allowed both Amex and CBOE to rely on the memorandum of understanding executed by the Commission and the CNBV, dated as of October 18, 1990 (“MOU”). The Commission noted in the respective Approval Orders that in cases where it would be impossible to secure an agreement, the Commission relied in the past on surveillance sharing agreements between the relevant regulators. The Commission further noted in the respective Approval Orders that pursuant to the terms of the MOU, it was the Commission’s understanding that both the Commission and the CNBV could acquire information from, and provide information to, the other, similar to that which would be required in a surveillance sharing agreement between exchanges; and therefore, should Amex or CBOE need information on Mexican trading in the component securities of the Mexico Index or the CBOE Mexico 30 Index, the Commission could request such information from the CNBV under the MOU.¹⁰

The Exchange has also recently contacted Bolsa with a request to enter into a surveillance agreement. Until such time that the Exchange is able to secure a surveillance agreement with Bolsa, the Exchange proposed to rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities for the component securities in the Fund that trade on Bolsa. The Exchange believes this proposal is reasonable in that the Commission has already acknowledged that the MOU permits both the

⁹ See Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995).

¹⁰ The Commission has also previously noted if securing an information sharing agreement is not possible, an exchange should contact the Commission prior to listing a new derivative securities product. In such case, the Commission may determine instead that it is appropriate to rely on a memorandum of understanding between the Commission and the foreign regulator. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Commission and the CNBV to acquire information from and provide information to the other, similar to that which would be required in a surveillance sharing agreement between exchanges. This proposal would otherwise render the Fund compliant with all of the Listing Standards.¹¹

The Exchange proposes to list options on the Fund for a six month pilot program until February 27, 2008 and rely on the MOU entered into between the Commission and the CNBV for purposes of satisfying its surveillance and regulatory responsibilities until the Exchange is able to secure a surveillance agreement with Bolsa. During this period, the Exchange agrees to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (i) express language addressing market trading activity, clearing activity, and customer identity; (ii) Bolsa's reasonable ability to obtain access to and produce requested information; and (iii) based on the comprehensive surveillance agreement and other information provided by Bolsa, the absence of existing rules, laws, or practices that would impede the Exchange from foreign information relating to market activity, clearing activity, or customer identity, or, in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information. The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa.¹²

¹¹ The Exchange notes that the component securities of the Fund change periodically. Therefore, the Exchange may in fact have in place surveillance agreements that would otherwise cover the percent weighting requirements set forth in the Listing Standards for securities not trading on Bolsa. In this event, the Fund would satisfy all of the Listing Standards and reliance on an approval order for the Fund would be unnecessary.

¹² The Exchange further represents that it is currently engaged in discussions to enter into information sharing agreements with certain other exchanges, and that upon signing such agreements, ISE will no longer need to rely on the Commission's MOU with the CNBV. See Amendment No. 1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, this proposed rule change is similar to proposals previously submitted by Amex and CBOE.¹⁵

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

Because the forgoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Securities Exchange Act Release Nos. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (Approving SR-AMEX-2006-43); 56321 (April 10, 2006), 71 FR 19568 (April 14, 2006) (Approving SR-CBOE-2006-32).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁸ However, Rule 19b-4(f)(6)(iii)¹⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, to permit the Exchange to list options on the Fund immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal is substantially similar to proposals previously submitted by Amex and CBOE. Also, the Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa during a six month pilot period in which the Exchange will rely on the MOU for purposes of satisfying its surveillance and regulatory responsibilities with respect to the Fund components trading on Bolsa. The Exchange represents that it will regularly update the Commission on the status of its negotiations with Bolsa. The Exchange further represents that it is currently engaged in discussions to enter into information sharing agreements with certain other exchanges, and that upon signing such agreements, ISE will no longer need to rely on the Commission's MOU with the CNBV. The Commission notes

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

¹⁹ Id.

that ISE currently has in place surveillance agreements with foreign exchanges that cover 45.97% of the securities in the Fund, and that the Index upon which the Fund is based appears to be a broad based-index. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission for a six month pilot period until February 27, 2008.²⁰

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2007-72 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-ISE-2007-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-

2007-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris
Secretary

²¹ 17 CFR 200.30-3(a)(12).