

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-NYSE-2006-43 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSE-2006-43. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSE-2006-43 and should be submitted on or before July 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54013; File No. SR-NYSE-2006-17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 2, Relating to Listing and Trading Shares of the iShares GSCI Commodity Indexed Trust Under New Rules 1300B and 1301B, et seq.

June 16, 2006.

On March 7, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 proposal to adopt rules that would provide for and govern the trading of Commodity Trust Shares, including shares ("Shares") of the iShares® GSCI® Commodity—Indexed Trust ("Trust"). On March 24, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 24, 2006.³ On June 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission received one comment letter.⁵ On May 12, 2006, the Exchange filed a response to those comments.⁶ This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment

No. 2, grants accelerated approval of Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

I. Description of Proposal

The NYSE proposes to adopt rules that would provide for and govern the trading of Commodity Trust Shares. A Commodity Trust Share is defined as

A security that: (a) Is issued by a trust ("Trust") which (i) is a commodity pool that is managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission, and (ii) which holds positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such positions; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities.

Proposed NYSE Rule 1300B(a). In addition, Proposed NYSE Rule 1301B sets forth guidelines for specialists in Commodity Trust Shares and other products whose price is based, in whole or in part, on: (a) The price of a commodity or commodities; (b) any futures contracts or other derivatives based on a commodity or commodities; or any indexed based on either (a) or (b), above.

Pursuant to Proposed NYSE Rule 1300B, et seq., the Exchange proposes to list and trade Shares, which fall within the definition of Commodity Trust Shares (as mentioned above) and are linked to the performance of the GSCI Total Return Index ("Index" or "GSCI-TR").

Description of the Shares

The Shares will constitute units of beneficial interest representing fractional undivided beneficial interests in the net assets of the Trust (described below). The performance of the Shares is designed to correspond generally to the performance of the Index before payment of the Trust's and the Investing Pool's expenses and liabilities. The investment objective of the Trust is for the performance of the Shares to correspond to the performance of the Index before payment of the Trust's and Investing Pool's expenses and liabilities. As discussed below, the value of the Index reflects the value of an investment in the Goldman Sachs Commodity Index ("GSCI"), a production-weighted index of the prices of a diversified group of futures contracts on physical commodities, together with a Treasury bill rate of interest that could be earned on funds committed to the trading of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 53659 (April 17, 2006), 71 FR 21074 ("Notice").

⁴ In Amendment No. 2, the Exchange states that: (1) The Sponsor (defined below) has informed the Exchange that the Trustee (also defined below) for the Trust will make the net asset value ("NAV") for the Trust available to all market participants at the same time; (2) if the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares; and (3) if the NAV is not disseminated to all market participants at the same time, the Exchange will immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

⁵ See letter from Kevin Rich, Director and Chief Executive Officer, DB Commodity Services LLC ("DB"), to Nancy M. Morris, Secretary, Commission, dated March 17, 2006 ("Rich Letter"). That letter is available for review on the Commission's Web site at: <http://www.sec.gov/comments/sr-nyse-2006-17/srnyse200617-1.pdf>.

⁶ See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy M. Morris, Secretary, Commission, dated May 12, 2006 ("Yeager Letter"). That letter also is available for review on the Commission's Web site at: <http://www.sec.gov/comments/sr-nyse-2006-17/myeager051206.pdf>.

⁶ 17 CFR 200.30-3(a)(12).

underlying futures contracts of the GSCI.

Substantially all of the assets of the Trust consist of its holdings of the limited liability company interests ("Investing Pool Interests") of iShares® GSCI Commodity-Indexed Investing Pool LLC ("Investing Pool").⁷ In turn, the Investing Pool holds long positions in futures contracts on the GSCI Excess Return Index ("CERFs"), which are listed on the Chicago Mercantile Exchange ("CME").

The Investing Pool will hold long positions in CERFs, which are cash-settled futures contracts listed on the CME that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the GSCI Excess Return Index ("GSCI-ER") at that time. The Investing Pool will also hold cash or Short-Term Securities⁸ to post as margin to collateralize the Investing Pool's CERF positions.⁹ The Investing Pool will earn interest on the assets used to collateralize its holdings of CERFs.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the GSCI-ER at the expiration of the contract multiplied by a fixed dollar multiplier. The final settlement value is determined for this purpose. Accordingly, a position in CERFs provides the holder with the positive or negative return on the GSCI-ER during the period in which the position is held. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as "variation margin") in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller. Trading of

CERFs commenced on the CME Globex electronic trading platform effective March 12, 2006, for trade date March 13, 2006. CERFs are listed and traded separately from the GSCI futures contracts and options on futures contracts.

Management of the Trust and Investing Pool

Both the Trust and the Investing Pool are commodity pools managed by the Sponsor. The Sponsor is registered as a commodity pool operator with the Commodity Futures Trading Commission ("CFTC"),¹⁰ and its primary business function is to act as Sponsor and commodity pool operator of the Trust and manager of the Investing Pool ("Manager"). As Manager, the Sponsor will serve as commodity pool operator of the Investing Pool and be responsible for its administration. The Manager will arrange for and pay the costs of organizing the Investing Pool. The Manager has delegated some of its responsibilities for administering the Investing Pool to the Administrator, Investors Bank & Trust Company, which in turn, has employed the Investing Pool Administrator and the Tax Administrator (Pricewaterhouse Coopers) to maintain various records on behalf of the Investing Pool.

The advisor to the Investing Pool ("Advisor") is Barclays Global Fund Advisors, a California corporation and an indirect subsidiary of Barclays Bank PLC. The Advisor will invest all of the Investing Pool's assets in long positions in CERFs and post margin in the form of cash or Short-Term Securities to collateralize the CERF positions (as discussed below). Any cash that the Investing Pool accepts as consideration from the Trust for Investing Pool Interests will be used to purchase additional CERFs, in an amount that the Advisor determines will enable the Investing Pool to achieve investment results that correspond with the Index, and to collateralize the CERFs. The Advisor will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in value of any of the commodities represented by the GSCI or the positions or other assets held by the Investing Pool.

The trustee of the Trust ("Trustee") is Barclays Global Investors, N.A., a national banking association affiliated with the Sponsor. The Trustee is responsible for the day-to-day

administration of the Trust. Day-to-day administration includes: (i) Processing orders for the creation and redemption of Baskets (as described below); (ii) coordinating with the Manager of the Investing Pool the receipt and delivery of consideration transferred to, or by, the Trust in connection with each issuance and redemption of Baskets; and (iii) calculating the net asset value of the Trust on each Business Day.¹¹ The Trustee has delegated these responsibilities to the Trust Administrator, Investors Bank & Trust Company, a banking corporation that is not affiliated with the Sponsor or the Trustee.

The Exchange states that neither the Trust nor the Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin.

Related Indices

The GSCI, the GSCI-ER, and the Index are administered, calculated, and published by Goldman, Sachs & Co. ("Index Sponsor"),¹² a subsidiary of The Goldman Sachs Group Inc. The Index Sponsor is a broker-dealer.¹³ The index values for the three indexes, the Index, the GSCI, and the GSCI-ER, are updated and disseminated at least every 15 seconds by one or more major market data vendors during the time the Shares trade on the Exchange.¹⁴ The settlement prices for the three indexes are also widely disseminated by one or more major market data vendors.

a. GSCI Index

The GSCI, upon which the Index is based, is a proprietary index on a production-weighted basket of principal physical commodities that satisfy specified criteria. The GSCI reflects the level of commodity prices at a given time and is designed to be a measure of the performance over time of the markets for these commodities. The Exchange states that the commodities represented in the GSCI are those

¹¹ The Trust Registration Statement defines "Business Day" as any day (1) on which none of the following occurs: (a) The NYSE is closed for regular trading, (b) the CME is closed for regular trading, or (c) the Federal Reserve transfer system is closed for cash wire transfers, or (2) the Trustee determines that it is able to conduct business.

¹² See telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 13, 2006 ("April 13 Telephone Conversation").

¹³ *Id.*

¹⁴ See telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on June 1, 2006 ("June 1 Telephone Conversation").

⁷ Investing Pool Interests are the only securities in which the Trust may invest.

⁸ "Short-Term Securities" means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

⁹ The Investing Pool will satisfy the 100% margin requirement by depositing with the Clearing FCM cash or Short-Term Securities with a value equal to 100% of the value of each long position in CERFs. As a result of these arrangements, the Investing Pool will be subject to substantially greater initial margin requirements than other market participants buying a CERF, but it will not be required to pay any additional amounts to its FCM as variation margin if the value of the CERFs declines.

¹⁰ Neither the Trust nor the Investing Pool is an investment company registered under the Investment Company Act of 1940.

physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities included in the GSCI are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor, in consultation with its Policy Committee described below) of those commodities to the world economy. The fluctuations in the level of the GSCI are intended generally to correlate with changes in the prices of those physical commodities in global markets.

The contracts to be included in the GSCI® must satisfy several sets of eligibility criteria established by the Index Sponsor.¹⁵ First, the Index Sponsor identifies those contracts that meet the general criteria for eligibility. Second, the contract volume and weight requirements are applied and the number of contracts is determined, which serves to reduce the list of eligible contracts. At that point, the list of designated contracts for the relevant period is complete.

The value of the GSCI® on any given day is equal to the total dollar weight of the GSCI® divided by a normalizing constant that assures the continuity of the GSCI® over time. The total dollar weight of the GSCI® is the sum of the dollar weight of each index component. The dollar weight of each such index component on any given day is equal to:

- The daily contract reference price,
- Multiplied by the appropriate contract production weights ("CPWs"), and
- During a roll period, the appropriate "roll weights" (discussed below).¹⁶

These factors, along with the contract daily return for each Index component, are described in more detail in the Notice. Additionally, this information is publicly available each business day on

the Index Sponsor's Web site at <http://www.gs.com/gsci>¹⁷ and the relevant futures exchanges, and/or from major market data vendors. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each contract is sufficiently liquid relative to the production of the commodity.

The composition of the GSCI® is reviewed on a monthly basis by the Index Sponsor and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI is reevaluated, based on the criteria and weighting procedures.¹⁸ This procedure is undertaken to allow the GSCI® to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year.¹⁹ As a result, it is possible that the composition or weighting of the GSCI® will change on one or more of these monthly Valuation Dates. In addition, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI® at the conclusion of each year, based on the above criteria. Other commodities that satisfy such criteria, if any, will be added to the GSCI®. Commodities included in the GSCI®

¹⁷ The CPWs are available in the GSCI® manual on the GSCI® Web site (<http://www.gs.com/gsci>) and are published on Reuters. The roll weights are not published but can be determined from the rules in the GSCI Manual. See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and John Carey, Assistant General Counsel, Exchange, on May 18, 2006 ("May 18 Telephone Conversation").

¹⁸ The Index Sponsor, Goldman, Sachs & Co. ("Goldman Sachs"), which calculates and maintains the GSCI® and the Index, is a broker-dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustment to an index and the trading personnel of the broker-dealer. Accordingly, the Exchange states that the Index Sponsor has represented that it: (i) Has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index; and (ii) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information. See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 14, 2006 ("April 14 Telephone Conversation II") and May 18 Telephone Conversation.

¹⁹ See also "Contract Expirations" in Notice, *supra*, note 3.

which no longer satisfy such criteria, if any, will be deleted.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI®.²⁰ The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI®, the effectiveness of the GSCI® as a measure of commodity futures market performance, and the need for changes in the composition or the methodology of the GSCI®. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the GSCI® and the Index are made by the Index Sponsor.²¹

b. The GSCI-TR Index

The Index, to which the performance of the Shares is linked, was established in May of 1991. The GSCI-TR reflects the return of the GSCI-ER, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the GSCI.²²

c. The GSCI-ER

The GSCI-ER, to which the performance of the CERFs held by the Investing Pool is linked, was also established in May of 1991. The GSCI-ER is calculated based on the same commodities included in the GSCI, and it reflects the returns that are potentially available through a rolling²³

²⁰ The component selections for the GSCI® would obviously affect the Index. See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on April 12, 2006 ("April 12 Telephone Conversation").

²¹ The Exchange states that the Index Sponsor has represented that the Policy Committee members are subject to written policies with respect to material, non-public information. See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on May 15, 2006 ("May 15 Telephone Conversation").

²² The Exchange states that it recently listed and is trading another derivative product, the Barclays iPath Exchange-Traded Notes, whose return is based on the GSCI-TR. See Securities Exchange Act Release No. 53849 (May 22, 2006), 71 FR 30706 (May, 30, 2006) (SR-NYSE-2006-20). The description of the GSCI-TR in regards to that product is comparable as that herein because it states that the GSCI-TR reflects the "excess returns" that are potentially available through an unleveraged investment in the contracts comprising the GSCI, which is in effect the GSCI-ER. See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on June 14, 2006 ("June 14 Telephone Conversation").

²³ Futures contracts have scheduled expirations, or delivery months. As one contract nears

¹⁵ See GSCI® Manual at <http://www.gs.com/gsci>. Goldman, Sachs & Co. is the Index Sponsor for both the Index and the GSCI®. See April 13 Telephone Conversation.

¹⁶ If the price is not made available or corrected by 4 p.m. New York time, the Index Sponsor, if it deems such action to be appropriate under the circumstances, will determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI® calculation. If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission staff and, as necessary, file a proposed rule change pursuant to Rule 19b-4, seeking Commission approval to continue to trade the Shares. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*; telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission; John Carey, Assistant General Counsel, Exchange; and Michael Cavalier, Assistant General Counsel, Exchange, on April 10, 2006 ("April 10 Telephone Conversation").

uncollateralized investment in the contracts comprising the GSCI.²⁴

d. Calculation of Related Indexes

The Index Sponsor makes the official calculations of the GSCI®, the GSCI-TR, and the GSCI-ER (collectively, "Related Indexes"). While the intraday and closing values of the Related Indexes are calculated by Goldman Sachs, a broker-dealer, a number of factors provide for the independent verification of these intraday and closing values.²⁵ The calculation methodology is public and transparent, and the factors included in the Index calculation, such as the CPWs, are available in the GSCI Manual found on GSCI's Web site at <http://www.gs.com/gsci> and are published on Reuters; the roll weights are not published but can be determined from the rules in the GSCI Manual.²⁶ This calculation is performed continuously

expiration it becomes necessary to close out the position in that delivery month and establish a position in the next available delivery month. This process is referred to as "rolling" the position forward.

²⁴ In the event the Trust utilizes any index that is a successor to or similar to the GSCI-ER or the GSCI-TR, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act. Such filing would address, among other things, the characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable to such index. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 10, 2006 ("April 10 Telephone Conference").

The Exchange will also file a proposed rule change pursuant to Rule 19b-4 if GSCI substantially changes either the Index component selection methodology or the weighting methodology. In addition, the Exchange will file a proposed rule change pursuant to Rule 19b-4 whenever GSCI adds a new component to the Index using pricing information from a market with which the Exchange does not have a previously existing information sharing agreement or switches to using pricing information from such a market with respect to an existing component when such component constitutes more than 10% of the weight of the Index. Unless approved for continued trading, the Exchange would commence delisting proceedings. See "Continued Listing Criteria," *infra*. April 10 Telephone Conference.

²⁵ The Index Sponsor calculates the level of the Related Indexes intraday and at the end of the day. The intraday calculation is based on feeds of real-time data relating to the underlying commodities and updates intermittently approximately every 15 seconds. In the GSCI market, trades are quoted or settled against the end-of-day value, not against the value at any other particular time of the day. With respect to the end-of-day closing level of the index, the Index Sponsor uses independent feeds from at least two vendors for each of the underlying commodities in the index to verify closing prices and limit moves. A number of commodities market participants independently verify the correctness of the disseminated intraday Index value and closing Index value. Additionally, the closing Index values are audited by a major independent accounting firm. See May 18 Telephone Conference.

²⁶ See *id.*

and is reported on Reuters page GSCI® and will be updated on Reuters at least every 15 seconds during business hours on each day on which the offices of the Index Sponsor in New York City are open for business (a "GSCI Business Day").²⁷ The settlement price for the Index is also reported on Reuters page GSCI® on each GSCI Business Day between 4 p.m. and 6 p.m., New York time. The intraday and settlement prices for the Index and GSCI-ER are also reported on Bloomberg page GSCI-ER (index).

In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.²⁸

Margin and Its Impact on Return

The Investing Pool will deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the GSCI-ER, although this correlation will not be exact.

The Exchange states that differences between the returns of the Investing Pool and the Index may be based on, among other factors, any differences between the return on the assets used by the Investing Pool to collateralize its CERF positions and the U.S. Treasury rate used to calculate the return component of the Index, timing differences, differences between the weighting of the Investing Pool's proportion of assets invested in CERFs versus the Index, and the payment of expenses and liabilities by the Investing Pool. The Trust's net asset value will

²⁷ Thus, this intraday index value of the Index (and the GSCI® and GSCI-ER) will be updated and disseminated at least every 15 seconds by a major market data vendor during the time the Shares trade on the Exchange. April 13 Telephone Conference. The intraday information with respect to the Index (and GSCI® and GSCI-ER) reported on Reuters is derived solely from trading prices on the principal trading markets for the various Index components. For example, the Index currently includes contracts traded on ICE Futures and the LME, both of which are located in London and consequently have trading days that end several hours before those of the U.S.-based markets on which the rest of the Index components are traded. During the portion of the New York trading day when ICE Futures and LME are closed, the last reported prices for Index Components traded on ICE Futures or LME are used to calculate the intraday Index information disseminated on Reuters.

²⁸ See "Calculation of the Index," *infra*.

reflect the performance of the Investing Pool, its sole investment.

Valuation of CERFs; Computation of Trust's Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York time), the Trustee will determine the NAV of the Trust and per share as of that time.

The Trustee will value the Trust's assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the NAV of the Investing Pool. The Manager will determine the NAV of the Investing Pool as of the same time that the Trustee determines the NAV of the Trust.

The Manager will value the Investing Pool's long position in CERFs on the basis of that day's announced CME settlement price for the CERF. The value of the Investing Pool's CERF position (including any related margin) will equal the product of: (i) The number of CERF contracts owned by the Investing Pool and (ii) the settlement price on the date of calculation. If there is no announced CME settlement price for the CERF on a Business Day, the Manager will use the most recently announced CME settlement price unless the Manager determines that that price is inappropriate as a basis for evaluation. The daily settlement price for the CERF is established by the CME shortly after the close of trading in Chicago at 2:40 p.m. New York time on each trading day.²⁹

Once the value of the CERFs and interest earned on any assets posted as margin and any other assets of the Investing Pool has been determined, the Manager will subtract all accrued expenses and liabilities of the Investing Pool as of the time of calculation in order to calculate the net asset value of the Investing Pool. The Manager, or the Investing Pool Administrator on its behalf, will then calculate the value of the Trust's Investing Pool Interest and provide this information to the Trustee.

Once the value of the Trust's Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of the Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the NAV of the Trust. The Trustee will determine the NAV per Share by dividing the NAV of the Trust by the

²⁹ See April 10 Telephone Conference.

number of Shares outstanding at the time the calculation is made.

The NAV for each Business Day on which the NYSE is open for regular trading will be distributed through major market data vendors and will be published online at <http://www.iShares.com>, or any successor thereto. The Trust will update the NAV as soon as practicable after each subsequent NAV is calculated. The Trust will disseminate the NAV per Share to all market participants at the same time.

Creation and Redemption Process

Creation and redemption of interests in the Trust, and the corresponding creation and redemption of interests in the Investing Pool, will generally be effected through transactions in "exchanges of futures for physicals," or "EFPs." EFPs involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract in exchange for a cash payment reflecting the value of the commodity and the relationship between the price of the commodity and the related futures contract. According to the Registration Statement, in the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trust in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an "Authorized Participant" (defined below) requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trust in return for Shares.

The Trust will simultaneously contribute to the Investing Pool the CERFs (and any cash or securities) received from the Authorized Participant in return for an increase in its Investing Pool Interests. If an EFP is executed in connection with the redemption of one or more Baskets, an Authorized Participant will transfer to the Trust the Basket of Shares being redeemed, and the Trust will transfer to the Authorized Participant CERFs, cash, or Short-Term Securities. In order to obtain the CERFs, cash or Short-Term Securities to be transferred to the Authorized Participant, the Trust will redeem an equivalent portion of its interest in the Investing Pool Interests.

The Trust will offer and redeem Shares on a continuous basis on each

business day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. Similarly, Baskets will be redeemed only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, creation and redemption orders received by the Trustee after 2:40 p.m., New York time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day prior to the opening of the Exchange. Additional information about the creation and redemption process is set forth in the Notice.

Dissemination of Information Relating to the Shares, Trust Holdings, and Related Indices

The Web site for the Trust (<http://www.iShares.com>), which will be publicly accessible at no charge, will contain the following information: (i) The prior Business Day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (iii) calculation of the premium or discount of such price against such NAV; (iv) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (v) the prospectus; (vi) the holdings of the Trust, including CERFs, cash and Treasury securities; (vii) the Basket Amount; and (viii) other applicable quantitative information. The Exchange on its Web site at <http://www.nyse.com> will include a hyperlink to the Trust's Web site at <http://www.iShares.com>.

As described above, the NAV for the Trust³⁰ will be calculated and

³⁰ See telephone conversation between Florence E. Harmon, Senior Special Counsel, Commission, and Michael Cavalier, Assistant General Counsel, Exchange, on June 15, 2006 ("June 15 Telephone Conversation") (authorizing change from "Fund" to "Trust").

disseminated daily.³¹ The NYSE also intends to disseminate, during NYSE trading hours for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on <http://www.nyse.com> daily trading volume, closing prices, and the NAV.

Real-time information is available about the Trust's holdings in the Investing Pool. Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index and the CERFs are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures, including the CERFs, is available by subscription from Reuters and Bloomberg. The futures exchanges on which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites, as well as other financial informational sources.

As stated above, a major market data vendor will disseminate at least every 15 seconds (during the time that the Shares trade on the Exchange) updated index values for the GSCI, the Index, and the GSCI-ER.³² Daily settlement values for the GSCI, the Index, and the GSCI-ER are also widely disseminated.³³

Indicative Value

In order to provide updated information relating to the Trust for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of Consolidated Tape Association ("CTA") an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York time. The Indicative

³¹ In Amendment No. 2, the Exchange states that the NAV will be distributed to all market participants at the same time.

³² See June 1 Telephone Conversation. The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the NYSE from 9:30 a.m. to 4:15 p.m. New York time, the Notice lists the trading hours for each of the Index commodities underlying the futures contracts.

³³ See April 13 Telephone Conference.

Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the Investing Pool, *i.e.*, CERFs.³⁴ The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York time.

When the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the value per Share of the Basket Amount. However, during NYSE trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and, therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Value on a per Share basis disseminated during NYSE trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day. The Exchange believes that dissemination of the Indicative Value provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or creation or redemption of the Shares.

Continued Listing Criteria

Under the applicable continued listing criteria, the Shares may be delisted as follows: (i) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (ii) the value of the Index ceases to be calculated or available on at least a 15-second basis from a source unaffiliated with the Sponsor, the Trust or the Trustee; (iii) the Indicative Value ceases to be available on at least a 15-second delayed basis; (iv) the NAV of the Shares is not distributed to all market participants at the same time;³⁵ or (v) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from

listing and trading upon termination of the Trust.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b-4 under the Act,³⁶ seeking approval to continue trading the Shares and unless approved, the Exchange will commence delisting the Shares if:

- The Index Sponsor substantially changes either the Index component selection methodology or the weighting methodology;
 - If a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement;³⁷ or
 - If a successor or substitute index is used in connection with the Shares. The filing will address, among other things the listing and trading characteristics of the successor or substitute index and the Exchange's surveillance procedures applicable thereto.
- Similarly, the Manager of the Investing Pool will utilize the most recent CERF settlement price to calculate NAV, unless "extraordinary circumstances" arise, which unless temporary in nature, would require Commission approval of an Exchange proposed rule change pursuant to Rule 19b-4.³⁸

Exchange Trading Rules and Policies

The Exchange states that the Shares are subject to all applicable equity trading rules. The Shares will trade between the hours of 9:30 a.m. and 4:15 p.m. ET and will be subject to the equity margin rules of the Exchange.³⁹ A minimum of three Baskets, representing 150,000 Shares will be outstanding at the commencement of trading on the Exchange. The original listing fee applicable to the Shares will be \$5,000. The annual continued listing fee for the Shares will be \$2,000. The Exchange states that the Trust is exempt from corporate governance requirements in Section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.⁴⁰

The Exchange is adopting new NYSE Rule 1300B ("Commodity Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of NYSE Rules 13 ("Definitions of Orders"), 36.30

("Communications Between Exchange and Members' Offices"), 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organization"), 104 ("Dealings by Specialists"), 105(m) ("Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Rule 105"), 460.10 ("Specialists Participating in Contests"), 1002 ("Availability of Automatic Feature"), and 1005 ("Order May Not Be Broken Into Smaller Accounts"), the Shares will be treated similar to Investment Company Units.

When these Rules discuss Investment Company Units, references to the word index (or derivative or similar words) will be deemed to be references to the applicable commodity or commodity index price and reference to the word security (or derivative or similar words) will be deemed to be references to the Commodity Index Trust Shares.

The Exchange does not currently intend to exempt Commodity Trust Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in the underlying commodities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rule.⁴¹ The Exchange will halt trading in the Shares if the value of the Index is no longer calculated or available on at least a 15-second basis through one or more major market data vendors during the time the Shares trade on the NYSE, if the Indicative Value per Share updated at least every 15 seconds is no longer calculated or available, or if the NAV

³⁴ See telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Commission, on April 5, 2006 (authorizing clarification of sentence).

³⁵ In the event that the Index value, the Indicative Value, or simultaneous distribution of the NAV is not available, the Exchange will immediately contact the Commission to discuss measures that may be appropriate.

³⁶ 17 CFR 240.19b-4.

³⁷ See April 10 Telephone Conference.

³⁸ See June 15 Telephone Conversation.

³⁹ See June 1 Telephone Conference (exchange citing NYSE Rule 431).

⁴⁰ See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7).

⁴¹ NYSE Rule 80B.

per Share is not available to all market participants at the same time.⁴²

Specialists' Trading Obligations

As a result of application of proposed NYSE Rule 1300B(b), the specialist in a relevant security,⁴³ the specialist's member organization and other specified persons will be prohibited under paragraph (m) of NYSE Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the physical commodities included in, or options, futures or options on futures on, the index underlying the relevant security, or any other derivatives (collectively, "derivative instruments") based on such index. A specialist entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines could act in a market making capacity in physical commodities included in, or derivative instruments based on such index, other than as a specialist in the same security in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the relevant security: (i) Will be obligated to conduct all trading in the specialty security in its specialist account, (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange); (ii) will be required to file with the Exchange and keep current a list identifying all accounts for trading in the physical commodities included in, or derivative instruments based on the relevant index, which the member organization acting as specialist may have or over which it may exercise investment discretion; and (iii) will be prohibited from trading in physical commodities included in, or derivative instruments based on the relevant index, in an account in which a member organization acting as specialist,

controls trading activities which have not been reported to the Exchange as required by proposed NYSE Rule 1301B.

Under Rule 1301B(b), the member organization acting as specialist in a relevant security will be required to make available to the Exchange such books, records or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in derivative instruments on an index underlying such security or any commodity included in such index, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under proposed NYSE Rule 1301B(c), in connection with trading derivative instruments based on an index underlying a relevant security in which the member organization acts as specialist, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in derivative instruments based on the underlying index or in any commodity included in such index.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Shares. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange currently has the authority under NYSE Rules 476 and 1301B to request the Exchange specialist in the Shares to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange, including specialist proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and "upstairs" firms—to fulfill its regulatory obligations.⁴⁴

⁴⁴ As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or

With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange ("NYMEX"), the Kansas City Board of Trade, ICE Futures, and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components and CERFs are traded are members of the Intermarket Surveillance Group ("ISG"), and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. All these surveillance arrangements constitute comprehensive surveillance sharing arrangements.

Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to NYSE Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient 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.

Information Memorandum

The Exchange will distribute an Information Memorandum to its members in connection with the trading in the Shares. The Information Memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Memorandum, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules,

affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

⁴² In such events, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

⁴³ New Supplementary Material .10 to proposed NYSE Rule 1301B would apply the provisions of proposed Rule 1300B(b) and Rule 1301B to certain securities listed on the Exchange pursuant to Section 703.19 ("Other Securities") of the NYSE Listed Company Manual. Examples of the securities to which Supplementary Material .10 will apply are the subjects of the following File Nos.: (i) SR-NYSE-2006-16 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Dow Jones-AIG Commodity Index Total ReturnSM); (ii) SR-NYSE-2006-19 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the Goldman Sachs Crude Oil Total Return IndexSM); and (iii) File No. SR-NYSE-2006-20 (proposal to list and trade Index-Linked Securities of Barclays Bank PLC linked to the performance of the GSCI Total Return IndexSM).

the Indicative Value, dissemination information, trading information and the applicability of suitability rules, and exemptive relief granted by the Commission from certain rules under the Act.⁴⁵ The Information Memorandum will also reference that the Trust is subject to various fees and expenses described in the Registration Statement. Finally, the Information Memorandum will also note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.⁴⁶ The Information Memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the shares is based.

II. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁷ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act,⁴⁸ which requires, among other things, that the Exchange's rules be designed to promote

just and equitable principles of trade, 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.

The Commission received one comment letter on the Exchange's proposed rule change, in which DB raised a number of concerns. DB argues that CERFs were created specifically for the Trust, have no other *bona fide* economic purpose, and therefore that the CERF market is illiquid and susceptible to manipulation.⁴⁹ In this regard, CERFs are futures contracts on the GSCI-ER, an index whose value is based on the prices of the commodities contracts that comprise the GSCI-ER. Manipulation of the CERFs market would drive the price of CERFs out-of-line with the price of the commodities contracts on which its value is based, providing a potential arbitrage opportunity.⁵⁰ Moreover, as the Exchange also states, it has comprehensive surveillance sharing arrangements with futures exchanges trading the contracts that comprise the GSCI-ER. The Exchange also states that the CME and the NYSE have surveillance procedures in place to monitor the trading of CERFs and Shares, respectively, and through their participation in the ISG can access relevant trading information from each other's market.

DB argues that no information is disclosed about the criteria the Manager would use to value the Investing Pool's long position in CERFs if it determines that the most recent CERF settlement price is an inappropriate basis for calculating NAV. According to DB, because the most recent CERF settlement price may not be a reliable measurement of value as a consequence of thin CERF trading, the Manager may exercise his discretion frequently. In response, the NYSE states that the Sponsor has told the Exchange that the alternate evaluation procedures would be applied only in "extraordinary circumstances," such as when commodities representing a substantial weighting of the GSCI are experiencing extreme volatility in the spot market, where trading in some or all of the futures contracts in the underlying GSCI commodities has been suspended, or when operational issues are causing the dissemination of inaccurate market

information.⁵¹ The Commission notes that the Exchange has committed to commence delisting of the Shares if the Index Sponsor and the Manager of the Investing Pool deviate from using the most recent CERF settlement price in calculating the Index and NAV, respectively, except in "extraordinary circumstances" on a temporary basis.

Further, DB stated that the proposed calculation of the Indicative Value of the Trust is flawed. This comment references language in the original proposal that has since been modified. As originally proposed, the Indicative Value was to be "calculated based on cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the *Index commodities* through investments held by the Investing Pool, *i.e.*, CERFs" (emphasis added). This ambiguous language has been clarified;⁵² the Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the Investing Pool, *i.e.*, CERFs.

A. Surveillance

The Commission finds that the proposed rules provide the NYSE with the tools necessary to adequately monitor trading in the Shares and are designed to prevent fraudulent and manipulative acts and practices.⁵³ Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the NYMEX, the Kansas City Board of Trade, ICE Futures, and the LME for the purpose of providing information in connection with trading of Commodity Trust Shares create the basis for the NYSE to monitor for fraudulent and manipulative trading practices. The Exchange represents that all of the other trading venues on which current Index components and CERFs are traded are members of the ISG, and the Exchange has access to all relevant trading information with respect to those contracts without any further action.

Moreover, NYSE Rules 476 and 1301B require Exchange specialists, upon the Exchange's request, to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange,

⁴⁵ The applicable rules are: Rule 10a-1; Rule 200(g) of Regulation SHO; Section 11(d)(1) and Rule 11d1-2; and Rules 101 and 102 of Regulation M under the Act.

⁴⁶ The Registration Statement provides:

Because new Shares can be created and issued on an ongoing basis, at any point during the life of the Trust, a "distribution", as such term is used in the Securities Act, will be occurring. Authorized Participants, other broker-dealers and other persons are cautioned that some of their activities may result in their being deemed participants in a distribution in a manner that would render them statutory underwriters and subject them to the prospectus-delivery and liability provisions of the Securities Act.

For example, an Authorized Participant, other broker-dealer firm or its client will be deemed a statutory underwriter if it purchases a Basket from the Trust, breaks the Basket down into the constituent Shares and sells the Shares to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for the Shares. A determination of whether a particular market participant is an underwriter must take into account all the facts and circumstances pertaining to the activities of the broker-dealer or its client in the particular case, and the examples mentioned above should not be considered a complete description of all the activities that would lead to designation as an underwriter and subject them to the prospectus-delivery and liability provisions of the Securities Act.

⁴⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁴⁸ 15 U.S.C. 78s(b)(5).

⁴⁹ See Rich Letter, *supra* note 5, at 1-2.

⁵⁰ Information is available about the NAV of the Trust, the market value of the Shares, and pricing information about the value of the commodities contracts that underlie CERFs, which is reflected in the Index, the GSCI and the GSCI-ER.

⁵¹ See Yeager Letter, *supra* at note 6, at 4.

⁵² See *supra* at note 34.

⁵³ 15 U.S.C. 78f(b)(5).

including specialist proprietary or other information regarding securities, commodities, futures, options on futures, or other derivative instruments. Furthermore, the Exchange believes that it also has the authority to request any other information from its member—including floor brokers, specialists and “upstairs” firms—to fulfill its regulatory obligations.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Shares can monitor the underlying Index relative to the Indicative Value of their Shares. There is a considerable amount of information about the Index and its components and the CERFs available through public Web sites and professional subscription services, including Reuters and Bloomberg. Real time information about the trading of the component futures contracts and the CERFs and their daily settlement prices are available from one or more major market data vendors. Delayed information is often available from futures exchanges trading the underlying Index components and the CERFs. The official calculation of the Index made by the Index Sponsor is performed continuously and is reported on Reuters page GSCI (or any successor or replacement page) and will be updated on Reuters at least 15 seconds during business hours during the time the Shares trade on the Exchange. The settlement price for the Index is reported on Reuters Page GSCI at the end of each GSCI Business Day and on Bloomberg page GSCLER (index). While the Index is calculated by a broker-dealer, a number of independent sources verify both the intraday and closing Index values.

C. Listing and Trading

The Commission finds that the Exchange’s proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. The Shares will trade as equity securities subject to NYSE rules including, among others, rules governing equity margins, specialist responsibilities, account opening, and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission notes that the Information Memorandum that the Exchange will distribute will inform members and member organizations about the terms, characteristics and

risks in trading the Shares, including their prospectus delivery obligations.

D. Amendment No. 2

The changes proposed by Amendment No. 2 are designed to ensure that certain material information—*i.e.*, the NAV for the Trust—is made available to all market participants at the same time. The Commission believes that these proposed changes strengthen the proposed rule change and do not raise any new regulatory issues. Therefore, the Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the 30th day after the amendment is published for comment in the **Federal Register**.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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 No. SR–NYSE–2006–17 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.

All submissions should refer to File Number SR–NYSE–2006–17. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSE–2006–17 and should be submitted by July 17, 2006.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁵⁴ that the proposed rule change (SR–NYSE–2006–17), as amended by Amendment No. 1, is hereby approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁵

Nancy M. Morris,
Secretary.

[FR Doc. E6–9985 Filed 6–23–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54012; File No. SR–NYSE–2006–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change as Amended by Amendments No. 1 and 2 Amending an Interpretation of NYSE Rule 345 (Employees—Registration, Approval, Records)

June 16, 2006.

I. Introduction

On February 17, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (“NYSE” or “Exchange”) 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 proposal to amend the filing requirements in connection with the establishment of an “independent contractor” relationship between a natural person, who is required to be registered pursuant to NYSE Rule 345, and a member organization. On May 3, 2006, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.