

quarters. Also, the closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

Based on the representations made in the NYSE proposal, the Commission believes that pricing and other important information about the Fund is adequate and consistent with the Act.

D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund's shares. Fund shares will be deemed equity securities subject to NYSE rules governing the trading of equity securities, including, among others, rules governing trading halts,⁴⁶ responsibilities of the specialist, account opening and customer suitability requirements,⁴⁷ and the election of stop and stop limit orders.

In addition, the Exchange states that iShares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the NYSE Manual. The Commission believes that the listing and delisting criteria for Fund shares should help to ensure that a minimum level of liquidity will exist in the Fund to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of Fund shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the NYSE expects to require that a minimum of one Creation Units (400,000 iShares) will be required to be outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help

to ensure that a minimum level of liquidity will exist at the start of trading.⁴⁸

E. Surveillance

The Commission finds that NYSE's surveillance procedures are reasonably designed to monitor the trading of the proposed iShares, including concerns with specialists purchasing and redeeming Creation Units. The NYSE represents that its surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange is also able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

As stated, when a broker-dealer, or a broker-dealer's affiliate such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI EAFE Value and Growth Indices. The Commission believes that the information barrier procedures put in place by MSCI address the unauthorized transfer and misuse of material, non-public information.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in NYSE Rule 703.16 (ICUs), and the Commission has previously approved similar products based on foreign indices.⁵⁰ The Funds

are substantially identical in structure to other iShares Funds based on foreign stock indexes, including the iShares MSCI EAFE Index Fund, which have an established and active trading history on the NYSE and other exchanges. The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,⁵¹ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2005-41), is hereby approved on an accelerated basis.⁵²

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-4274 Filed 8-8-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52188; File No. SR-NYSE-2005-53]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend for Additional Six Months the Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

August 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 22, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

2001), 66 FR 56869 (November 13, 2001) (SR-Amex-2001-45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR-Amex-98-49); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR-Amex-95-43).

⁵¹ 15 U.S.C. 78s(b)(5).

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁶ In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (i) The extent to which trading is not occurring in stocks underlying the index; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

⁴⁷ Prior to commencement of trading, the Exchange states that it will issue an Information Memo informing members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of NYSE Rule 405 (Diligence as to Accounts).

⁴⁸ This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of ICUs.

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ See *supra* note 35. See also, e.g., Securities Exchange Act Release Nos. 44990 (October 25,

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange seeks to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange ("Pilot") for an additional six months, until January 31, 2006. The last extension of the Pilot was in effect on a four-month pilot basis expiring on July 31, 2005.³ The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 Commission originally approved the Pilot to be implemented as a six-month pilot⁴ beginning no later than June 23, 2003.⁵ Since the inception of the Pilot, the Exchange has extended the Pilot four times, with the current Pilot expiring on July 31, 2005.⁶ In addition,

the Exchange has filed a proposed rule change to permanently approve the Pilot.⁷ The Exchange represents that no regulatory actions or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months.⁸ Therefore, the Exchange seeks to extend the Pilot for an additional six months, until January 31, 2006.

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers between the Trading Floor and an off-Floor location was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for "market look" information. Prior to the Pilot, a broker could not use a portable phone at the point of sale in the trading crowd to speak with a person located off the Floor.

The Exchange proposes to extend the Pilot for an additional six months, expiring on January 31, 2006. The Pilot would amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as "market look" observations as have historically been routinely transmitted from a broker's booth location. Use of a portable telephone on the Exchange Floor other than one authorized and

issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. Under NYSE Rule 123(e), a broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC") electronic database.⁹ In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under NYSE Rules 342 and 345, among others.¹⁰

Furthermore, orders in Investment Company Units (as defined in Section 703.16 of Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"), would also be subject to the same FESC requirements as orders in any other security listed on the Exchange.¹¹ As a result, the Pilot would continue to allow for the use of portable phones for orders in ETFs.

In addition, NYSE Rule 36.20, both prior to the Pilot, and as proposed to be amended, would not apply to specialists who are prohibited from speaking from the post to upstairs trading desks or customers. The Exchange notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.¹²

The Exchange believes that an extension of the Pilot for an additional

⁹ See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR-NYSE-98-25). See also Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR-NYSE-2001-39) (discussing certain exceptions to FESC, such as orders to offset an error or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

¹⁰ See Information Memos 01-41 (November 21, 2001), 01-18 (July 11, 2001) (available on <http://www.nyse.com/regulation.html>) and 91-25 (July 8, 1991) for more information regarding Exchange requirements for conducting a public business on the Exchange Floor.

¹¹ Previously, under an exception to NYSE Rule 123(e), orders in ETFs could first be executed and then entered into FESC. However, in SR-NYSE-2003-09, the Exchange eliminated the exception to NYSE Rule 123(e) for ETFs, and, as part of its proposal in SR-NYSE-2002-11, allowed the use of portable phones for orders in ETFs. See Securities Exchange Act Release No. 47667 (April 11, 2003), 68 FR 19063 (April 17, 2003). NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into FESC before they can be represented in the Exchange's auction market.

¹² See Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR-NYSE-00-31) (discussing restrictions on specialists' communications from the post).

³ See Securities Exchange Act Release No. 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR-NYSE-2005-20).

⁴ See Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR-NYSE-2002-11) ("Original Order").

⁵ See Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR-NYSE-2003-19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

⁶ See Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR-NYSE-2003-38) (extending the Pilot for an additional six months ending on June 16, 2004);

49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR-NYSE-2004-30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR-NYSE-2004-67) (extending the Pilot for an additional four months ending March 31, 2005); and 51464, *supra* note 3.

⁷ See SR-NYSE-2004-52, pending with the Commission.

⁸ The Exchange notes that it has received incoming telephone records for the period of June 5, 2005 through July 4, 2005, and will continue to receive monthly updates. Telephone conversation between Jeff Rosenstock, Senior Special Counsel, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on July 27, 2005.

six months would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.¹³ By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information which, prior to the Pilot, had to be transmitted somewhat more circuitously via the broker's booth.

Pilot Program Results. Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers. In addition, with regard to portable phone usage, for a sample week of June 20, 2005 through June 24, 2005, an average of 12,156 calls per day were originated from portable phones, and an average of 5,624 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 8,816 calls per day were internal calls to the booth, and 3,340 calls per day were external calls. Thus, approximately 73% of the calls originated from portable phones were internal calls to the booth. With regard to received calls, of the 5,624 average calls per day received, an average of 2,781 calls per day were external calls, and an average of 2,843 calls per day were internal calls received from the booth. Thus, approximately 51% of all received calls were internally generated, and 49% were calls from the outside.

Therefore, the Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones, but as noted above, there have been no regulatory, administrative, or other technical problems identified with their usage. The Exchange believes that the Pilot appears to facilitate communication on the Floor without any corresponding drawbacks. Therefore, the Exchange believes it is appropriate to extend the

Pilot for an additional six months, expiring on January 31, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁴ in general, and further the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is 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 Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange could take place.

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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ At any time within 60 days of the filing of the 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.

The Exchange requests that the Commission waive the five-day pre-

filing period and 30-day operative period under Rule 19b-4(f)(6)(iii).¹⁸ The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid inconvenience and interruption to the public. The Commission has waived the five-day pre-filing requirement for this proposed rule change. In addition, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on July 22, 2005.¹⁹ The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot until January 31, 2006.

The Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 requires,²⁰ and that orders are being handled in compliance with NYSE rules. The Commission expects the Exchange to actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. In this regard, the Commission notes that the Exchange should address whether telephone records, including incoming telephone records, are adequate for surveillance purposes.

The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, in any future additional filings on the Pilot, the Commission would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or

¹³ See, e.g., Securities Exchange Act Release Nos. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR-CBOE-00-04) (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines from any source, directly at equity trading posts) and 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR-PCX-00-33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove current prohibitions against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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).

¹⁹ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ See note 10 *supra* and accompanying text for other NYSE requirements that Floor brokers be properly qualified before doing public customer business.

concerns, and any advantages or disadvantages that have resulted.

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-NYSE-2005-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-53. 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 will also be available for inspection and copying at the principal office of NYSE. 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-2005-53 and should be submitted on or before August 30, 2005.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52187; File No. SR-Phlx-2005-32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participation Guarantees for Floor Brokers Representing Crossing and Facilitation Orders

August 1, 2005.

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 July 22, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ 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 from interested persons.

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

The Phlx proposes to amend Exchange Rule 1064 concerning the guaranteed participation to which a Floor Broker is entitled with respect to equity options when seeking to execute crossing and facilitation transactions. Under the current rule, after requesting a market from the trading crowd, a Floor Broker seeking to cross an order for equity options that he or she is holding with another order, or, in the case of a public customer order, with a facilitation order from the firm from which the public customer order originated, is entitled to a guaranteed participation of 20% when the order

trades at a price that matches the price given by the trading crowd in response to the initial request for a market, and 40% when the order trades at a price that improves upon that price. The proposed rule change would entitle the Floor Broker to a 40% guarantee in both cases. The proposed rule change would also clarify that the corresponding guaranteed participation to which a specialist is entitled would continue to be a percentage that, combined with the percentage that the Floor Broker crossed, is no more than 40% of the original order. The text of amended Exchange Rule 1064 is set forth below. Brackets indicate deletions; *italics* indicate new text.

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)-(d) No change.

Commentary:

.01 No change.

.02 Firm Participation Guarantees.

(i)-(ii) No change.

(iii) The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is determined as follows:

(A) With respect to orders for equity options, [(i) 2] 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market [; or (ii) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market].

(B) With respect to orders for index options, 20% of the remaining contracts in the order. (iv)-(v) No change.

(vi) If a trade pursuant to this Commentary occurs when the specialist is on parity with one or more controlled accounts, then the Enhanced Specialist Participation which is established pursuant to Exchange Rule 1014(g)(ii)-(iv) shall apply only to the number of contracts remaining after the following orders have been satisfied: Those public customer orders which trade ahead of the cross transaction, and any portion of an order being crossed against the original order being represented by the Floor Broker.

(A) *Respecting orders for index options*, [T] the Enhanced Specialist Participation may only be 20% of the original order after customer orders have been executed for orders crossed pursuant to this paragraph (vi) unless

²¹ 17 CFR 200.30-3(a)(12).

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).