

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25969; 812-12932]

### iShares Trust, et al.; Notice of Application

March 21, 2003.

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

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

**SUMMARY:** The order would permit certain registered management investment companies and unit investment trusts to acquire shares of other registered open-end management investment companies and unit investment trusts that operate as exchange-traded funds and are outside the same group of investment companies. The order also would amend a condition in two prior orders.

*Applicants:* iShares Trust ("Trust"), iShares, Inc. ("Corporation") and Barclays Global Fund Advisors ("BGFA").

**DATES:** The application was filed on February 26, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and servicing applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 14, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: Trust and Corporation, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; BGFA, 45 Fremont Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. The Trust and the Corporation are open-end management investment companies registered under the Act and are comprised of separate series that seek to provide investment results that correspond generally to the performance of specified market indices and that operate as exchange-traded funds ("ETFs"). BGFA is a registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to each existing iShares Fund (as defined below).

2. Applicants request relief to permit registered management investment companies and unit investment trusts to acquire shares of series of the Trust or the Corporation beyond the limitations in section 12(d)(1)(A) and (B). Applicants request that the relief apply to (i) each registered open-end management investment company or unit investment trust that operates as an ETF, is currently or subsequently part of the same "group of investment companies" as the Trust or the Corporation within the meaning of section 12(d)(1)(G)(ii) of the Act, and is advised or sponsored by BGFA or an entity controlling, controlled by or under common control with BGFA (such open-end ETFs are referred to as "Open-End iShares Funds"; such unit investment trust ETFs are referred to as "UIT iShares Funds" Open-End iShares Funds and UIT iShares Funds are collectively referred to as "iShares Funds"),<sup>1</sup> as well as any broker-dealer selling shares of an iShares Fund to an Investing Fund (as defined below); and

(ii) each registered management investment company or unit investment trust that is not part of the same "group of investment companies" as the iShares Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a participation agreement ("Participation Agreement") with an iShares Fund (such management investment companies are referred to as "Investing management Companies"; such unit investment trusts are referred to as "Investing Trusts," and Investing Management Companies and Investing trusts are collectively referred to as "Investing Funds").<sup>2</sup> Each Investing Management Company will be advised by an investment adviser that is registered under the Advisers Act or exempt from registration ("Advisor").

3. Applicants state that the iShares Funds will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the iShares Funds provide instant and highly liquid exposure to a broad range of markets, sectors or subsectors, geographic regions and industries, and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

#### Applicants' Legal Analysis

##### A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any broker or dealer registered under the Securities Exchange Act of 1934, from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the

<sup>2</sup> All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in iShares Funds and not in any other registered investment company.

<sup>5</sup> 17 CFR 200.30-3(a)(1).

<sup>1</sup> All existing iShares Funds are open-end management investment companies.

acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire shares of the iShares Funds ("iShares") and the iShares Funds and any broker or dealer to sell iShares to the Investing Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by an Investing Fund or its affiliates over the iShares Funds. To limit the control that an Investing Fund may have over an iShares Fund, applicants propose a condition prohibiting an Advisor, or a sponsor to an Investing Trust ("Sponsor"), and certain affiliates from controlling (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the iShares Funds, applicants propose conditions 2, 3, 4, 6, 7 and 8, stated below, to preclude an Investing Fund and its affiliated entities from taking advantage of an iShares Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Investing Fund understands the implications of an investment by an Investing Fund in an iShares Fund under the requested order, each Investing Fund and iShares Fund will execute an agreement stating that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. In addition, an Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by an Investing Management Company or Investing Trust in an amount at least equal to any compensation received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the investment adviser, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the National Association of Securities Dealers, Inc. ("NASD").

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that an iShares Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require an Investing Fund that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in ETFs and to disclose, in "plain English," in its prospectus the unique characteristics of the Investing Fund investing in ETFs, including, but not limited to, the expense structure and any additional expenses of investing in ETFs.

#### **B. Section 17(a)**

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting

securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that an iShares Fund could become an affiliated person of an Investing Fund if the Investing Fund acquires more than 5% of an iShares Fund's outstanding voting securities. Although applicants believe that most Investing Funds will purchase iShares in the secondary market and not directly from an iShares Fund, an Investing Fund that owns 5% or more of an iShares Fund might seek to transact directly with an iShares Fund.<sup>3</sup> In light of this possible affiliation, section 17(a) could prevent an iShares Fund from selling iShares to and redeeming iShares from an Investing Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of iShares directly from an iShares Funds will be based on the net asset value of the iShares Fund. Applicants state that the proposed arrangement will be consistent with the policies of each Investing Fund and iShares Fund and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and submit that the exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

<sup>3</sup> iShares are only purchased and redeemed directly from an iShares Fund in large blocks of iShares (generally between 50,000 and 600,000 shares) called "creation units."

### C. Prior Orders

Applicants also seek to amend a condition to certain prior exemptive orders ("Prior Orders") so that the condition is consistent with the relief requested from section 12(d)(1).<sup>4</sup> Existing condition 2 to each of the Prior Orders currently provides that each iShares Fund prospectus and Product Description will clearly disclose that, for purposes of the Act, iShares are issued by the iShares Fund and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.<sup>5</sup> In light of the requested order to permit Investing Funds to invest in iShares Funds in excess of the limits of section 12(d)(1), applicants wish to replace this condition in the Prior Orders with condition 13, as stated below. Under the new condition, Investing Funds will be alerted that they may invest in iShares Funds in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into a Participation Agreement with the iShares Fund regarding the terms of the investment.

### Applicants' Conditions

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

1. An Advisor, a Sponsor, any person controlling, controlled by, or under common control with an Advisor or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (collectively, the "Group") will not control (individually or in the aggregate) an iShares Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an iShares Fund, the Group, in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an iShares Fund, the Group will vote its shares of the iShares Fund in the same

proportion as the vote of all other holders of the iShares Fund's shares.

2. An Investing Fund and its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an "Investing Fund Affiliate") will not cause any existing or potential investment by the Investing Fund in an iShares Fund to influence the terms of any services or transactions between the Investing Fund or Investing Fund Affiliate and the iShares Fund or its investment adviser, promoter, sponsor, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an "iShares Fund Affiliate").

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Advisor is conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an iShares Fund or an iShares Fund Affiliate in connection with any services or transactions.

4. The board of directors/trustees of an Open-End iShares Fund ("Board"), including a majority of the disinterested Board members, will determine that any consideration paid by an Open-End iShares Fund to an Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Open-End iShares Fund; (ii) is within the range of consideration that the Open-End iShares Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned.

5. An Advisor or a trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-End iShares Fund under rule 12b-1 under the Act) received by the Advisor or trustee or Sponsor to the Investing Trust or an affiliated person of the Advisor, trustee or Sponsor from the iShares Funds in connection with the investment by the Investing Management Company or Investing Trust in the iShares Funds.

6. No Investing Fund or Investing Fund Affiliate will cause an iShares Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, employee or sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, investment adviser, employee or sponsor is an affiliated person (each, an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

7. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-End iShares Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in an Open-End iShares Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Open-End iShares Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Open-End iShares Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

8. Each Open-End iShares Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of

<sup>4</sup> The Prior Orders are iShares, Inc., *et al.*, Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order) and Barclays Global Fund Advisors, *et al.*, Investment Company Act Release Nos. 25594 (May 29, 2002) (notice) and 25622 (June 25, 2002) (order).

<sup>5</sup> A "Product Description" is a document that accompanies secondary market trades of iShares and provides a plain English overview of the iShares Fund.

each purchase, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in an iShares Fund in excess of the limit in section 12(d)(1)(A)(i), each Investing Fund and the iShares Fund will execute an agreement stating, without limitation, that the board of directors or trustees of, and the investment adviser to, an Investing Management Company, and the trustee and Sponsor of an Investing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-End iShares Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-End iShares Fund of the investment. At such time, the Investing Fund will also transmit to the Open-End iShares Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-End iShares Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The iShares Fund and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-End iShares Fund, the list with any updated information for a period of not less than six years from the end of fiscal year in which any investment occurred, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Open-End iShares Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or services fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No iShares Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the

Act, except to the extent permitted by an exemptive order that allows the iShares Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

#### Amendment to Prior Orders

Applicants agree to replace condition 2 of the Prior Orders with the following condition:

13. Each iShares Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, the iShares are issued by an iShares Fund, which is an investment company, and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits investment companies to invest an iShares Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the investment company enter into an agreement with the iShares Fund regarding the terms of the investment.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25968; 812-12866]

### SAFECO Common Stock Trust and SAFECO Asset Management Co.; Notice of Application

March 21, 2003.

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

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

*Summary of Application:* The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

*Applicants:* SAFECO Common Stock Trust (the "Trust") and SAFECO Asset Management Co. (the "Adviser").

*Filing Dates:* The application was filed on August 9, 2002, and amended on March 3, 2003.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549-0609. Applicants, 4854 154th PL. NE., Redmond, WA 98052.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 942-0634 or Annette Capretta, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

### Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has multiple series (each series, a "Fund," collectively the "Funds"), each with its own investment objectives, policies, and restrictions. The Adviser, a Washington corporation, serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").<sup>1</sup>

<sup>1</sup> The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application ("Future Funds," included in the term "Funds"). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-adviser (as defined below), the name of the Adviser or the name of the entity