

Fund, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 17(a) of the Act

7. Section 17(a) of the Act makes it unlawful, except under certain circumstances, for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control, with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

8. Applicants state that any person owning 5% or more of a New Fund's Shares or more than 25% of a New Fund's Shares will be affiliated with the New Fund. Applicants state that section 17(a) may prohibit such affiliated persons of a New Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the New Fund) from purchasing or redeeming Creation Unit Aggregations in kind. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit these affiliated persons of the New Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the New Fund) to effect such transactions in Creation Unit Aggregations.

9. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment

company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Unit Aggregations. The deposit procedure for in-kind purchases and redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will not favor affiliated persons, and affiliated persons of these affiliated persons, described above.

Applicants' Conditions

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

1. Applicants will not register a future series of the Trust that would rely on the requested relief, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such future series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. Each New Fund's prospectus and the Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the New Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as each New Fund operates in reliance on the requested order, the Shares of such New Fund will be listed on a national securities exchange.

4. Neither the Trust nor any New Fund will be advertised or marketed as an open-end fund or a mutual fund. Each New Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Unit Aggregations only.

5. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each New Fund: (a) the prior business day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each New Fund will state that the website for the Trust has information about the premiums and discounts at which a New Fund's Shares have traded.

6. The prospectus and annual report for each New Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14007 Filed 6-4-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25595; 812-10884]

iShares, Inc., et al.; Notice of Application

May 29, 2002.

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

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 24(d) of the Act.

APPLICANTS: iShares, Inc. and iShares Trust (the "Companies"), Barclays Global Fund Advisors (the "Adviser"), and SEI Investments Distribution Co. (the "Distributor").

SUMMARY OF APPLICATION: Applicants request an order amending certain prior

orders (the "Prior Orders")¹ to permit dealers to sell shares of series of the Companies to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"). The order would also provide such relief to certain series of iShares Trust that are the subject of a pending application for exemptive relief (the "Fixed Income Application").²

FILING DATES: The application was filed on December 4, 1997 and amended on November 24, 1998 and May 17, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 June 24, 2002, 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th St., NW, Washington, DC 20549-0609. Applicants: iShares, Inc., 400 Bellevue Parkway, Wilmington, DE 19809, Attention: John Falco; iShares Trust, c/o Investors Bank & Trust Co., 200 Clarendon St., Boston, MA 02116, Attention: Susan C. Mosher, Esq.; Barclays Global Fund Advisors, c/o Barclays Global Investors, 45 Fremont St., San Francisco, CA 94105, Attention: Joanne T. Medero, Esq.; and SEI Investments Distribution Co., One Freedom Valley Dr., Oaks, PA 19456, Attention: William E. Zitelli, Esq.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942-0582, or Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (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 5th St., NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. iShares, Inc.³ is an open-end management investment company registered under the Act and incorporated in the state of Maryland. iShares Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Each of the Companies is comprised of separate series, referred to as "Index Funds." The shares of each Index Fund are referred to as "iShares."

2. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940, serves as investment adviser to the Companies. The Adviser may enter into sub-advisory agreements with additional investment advisers to act as subadvisers with respect to particular Index Funds. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and a member of the National Association of Securities Dealers, Inc., serves as the principal underwriter and distributor of the Companies' shares.

3. Each Index Fund seeks to provide investment results that correspond generally to the price and yield performance of publicly traded securities in the aggregate in particular markets, as represented by a particular securities index (each, a "Benchmark Index"). No entity that creates, compiles, sponsors or maintains any Benchmark Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, either Company or any subadviser or promoter of an Index Fund.

4. In the future, the applicants may offer additional Index Funds pursuant to certain of the Prior Orders ("Future Funds") based on other Benchmark Indices. The applicants request that the order granted pursuant to the application apply to any Future Funds. Any Future Funds will (a) By advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order. References to the Index Funds include the Future Funds.

³ Formerly "Foreign Fund, Inc." and "WEBS Index Fund, Inc."

5. iShares are issued in large aggregations called "Creation Units." Purchasers of Creation Units may separate a Creation Unit into individual iShares.⁴ iShares are listed on a national securities exchange, as defined in section 2(a)(26) of the Act (an "Exchange")⁵ and traded in the secondary market in the same manner as other equity securities. Except when aggregated in Creation Units, iShares are not redeemable from the Companies. iShares are purchased and redeemed primarily on an "in-kind" basis: an investor purchasing a Creation Unit on an in-kind basis generally must deliver and an investor redeeming a Creation Unit on an in-kind basis generally will receive securities reflecting the names and weightings of the securities that comprise the Index Fund's portfolio.⁶

6. Applicants will make available an iShares product description ("Product Description") for distribution in accordance with an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares to deliver a Product Description to investors purchasing iShares. Applicants state that any other Exchange that applies for unlisted trading privileges in iShares will have to adopt a similar rule.⁷ The

⁴ Applicants state that persons purchasing Creation Units will be cautioned in each Index Fund's prospectus ("Prospectus") that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent iShares, and sells iShares directly to its customers; or if it chooses to couple the creation of a supply of new iShares with an active selling effort involving solicitation of secondary market demand for iShares. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The Prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary transactions), and thus dealing with iShares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

⁵ With two exceptions, the iShares of all Index Funds currently offered to the public are listed on the American Stock Exchange LLC. The iShares of the iShares S&P 100 Index Fund are listed on the Chicago Board Options Exchange, Inc., and the iShares of the iShares S&P Global 100 Index Fund are listed on The New York Stock Exchange, Inc.

⁶ A Company also may effect redemptions for cash in certain circumstances.

⁷ Applicants expect that the number of purchases of iShares in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in iShares.

¹ See Foreign Fund, Inc., Investment Company Act Release No. 21803 (Mar. 5, 1996); WEBS Index Fund, Inc., Investment Company Act Release No. 23890 (July 6, 1999); Barclays Global Fund Advisors, Investment Company Act Release No. 24451 (May 12, 2000); Barclays Global Fund Advisors, Investment Company Act Release No. 24452 (May 12, 2000); iShares Trust, Investment Company Act Release No. 25111 (Aug. 15, 2001); iShares, Inc., Investment Company Act Release No. 25215 (Oct. 18, 2001).

² The Fixed Income Application, filed on January 2, 2001, by iShares Trust, Barclays Global Fund Advisors and SEI Distribution Co., relates to certain new series of iShares Trust that would track fixed income indices.

Product Description for an Index Fund will provide a plain English overview of the Index Fund, including its investment objective and investment strategies and the material risks and potential rewards of investing in the Index Fund. The Product Description also will provide a brief, plain English description of the salient aspects of the Index Fund's iShares. The Product Description will advise investors that a Prospectus and the Index Fund's Statement of Additional Information may be obtained, without charge, from the investor's broker or from the Distributor. The Product Description also will provide a website address (in most cases to a website maintained by the sponsor of the relevant Benchmark Index) where investors can obtain information about the composition and compilation methodology of an Index Fund's Benchmark Index.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from section 24(d) of the Act. The requested order would amend the Prior Orders and provide relief to the Index Funds that are the subject of the Fixed Income Application.

2. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling iShares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁸

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that 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. Applicants state that for the reasons discussed below the requested relief meets these standards.

4. Applicants state that iShares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment

companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

5. Applicants contend that iShares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because iShares will be exchange-listed, prospective investors will have access to several types of market information about iShares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also will be published daily in the financial section of newspapers. In addition, the iShares Web site (<http://www.ishares.com>) includes quantitative information updated on a daily basis, including, for each Index Fund, daily trading volume, the previous business day's net asset value ("NAV") and the reported closing price. The Web site will also include, for each Index Fund, a calculation of the premium or discount of the mid-point of the bid-ask spread at the time of calculation of the NAV (the "Bid/Ask Price") against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.⁹ The iShares Web site also contains information with respect to the portfolio securities of each Index Fund, including their names, numbers of shares held by the Index Fund and the percentages of the Index Fund's portfolio, and reported closing prices of such securities.

6. Investors also will receive a Product Description describing the Index Fund and its iShares. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain information

about iShares that is tailored to meet the needs of investors purchasing iShares in the secondary market.

Applicants' Conditions

Prior Orders

Applicants agree that the order of the Commission would amend the Prior Orders to grant the requested relief and to replace the existing conditions with the following conditions:

1. Applicants will not register any Future Fund by means of filing a post-effective amendment to a Company's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission or (b) such Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, iShares are issued by the Index Fund and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Company operates in reliance on the requested order, the individual iShares will be listed on an Exchange.

4. Neither of the Companies nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's Prospectus will prominently disclose that iShares are not individually redeemable shares and will disclose that the owners of iShares may acquire those iShares from the Index Fund and tender those iShares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that iShares are not individually redeemable and that owners of iShares may acquire those iShares from the Index Fund and tender those iShares for redemption to the Index Fund in Creation Units only.

5. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares to deliver a Product Description to purchasers of iShares.

6. The Web site(s) for the Companies, which is and will be publicly accessible

⁸ Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter.

⁹ The Bid/Ask Price of an Index Fund is determined using the highest bid and the lowest offer on the Exchange on which the iShares are listed for trading. In the case of any Index Fund the NAV of which is determined after the close of the regular trading day on its listing Exchange, the "Bid/Ask Price" will be the mid-point of the bid/ask spread as of the close of regular trading on its listing Exchange, and in the case of any Index Fund the NAV of which is determined prior to the opening of the regular trading day on its listing Exchange, the "Bid/Ask Price" will be the mid-point of the bid/ask spread as of the opening of regular trading on its listing Exchange. Currently, four Index Funds calculate NAV at times outside the regular trading day on their listing Exchange (iShares MSCI Brazil Index Fund, iShares MSCI Malaysia Index Fund, iShares MSCI South Korea Index Fund, and iShares MSCI Taiwan Index Fund).

at no charge, will contain the following information, on a per iShare basis, for each Index Fund: (a) the prior business day's NAV and Bid/Ask Price, and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the website(s) for the Companies has information about the premiums and discounts at which the Index Fund's iShares have traded.

7. The Prospectus and annual report for each Index Fund will also include: (a) the information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per iShare basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Benchmark Index.

Fixed Income Index Funds

The applicants agree that the order granting the requested relief with respect to the Index Funds proposed in the Fixed Income Application will be subject to the following condition:

8. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares of such Index Fund to deliver a Product Description to purchasers of iShares.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-14008 Filed 6-4-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46001; File No. 4-429]

Joint Industry Plan; Order Granting Approval of Joint Amendments Nos. 2 and 3 to the Options Intermarket Linkage Plan Relating to Satisfaction of Trade-Throughs, the Procedures for Handling Multiple Principal Orders, Restrictions on Withdrawal, and an Implementation Timetable

May 30, 2002.

On November 20, 2001, November 21, 2001, December 10, 2001, December 10, 2001, and December 26, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx"), International Stock Exchange LLC ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE"), Pacific Exchange, Inc. ("PCX"), and American Stock Exchange LLC ("AMEX") (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 11Aa3-2 thereunder,² an amendment ("Joint Amendment No. 2") to the Options Intermarket Linkage Plan.³ In addition, on April 5, 2002, April 9, 2002, April 15, 2002, April 15, 2002 and April 16, 2002, CBOE, ISE, Phlx, PCX, and Amex, respectively, filed with the Commission an additional amendment ("Joint Amendment No. 3") to the Linkage Plan.

The proposed amendments to the Linkage Plan were published for comment in the **Federal Register** on April 30, 2002.⁴ No comments were received on the proposal. This order approves the proposed amendments to the Linkage Plan.

I. Description of the Proposed Amendments

A. Proposed Joint Amendment No. 2

In Proposed Joint Amendment No. 2, the Participants propose changes to two provisions of the Linkage Plan to

modify: (1) The manner in which a Participant displaying the best published quote may be compensated when its quote represents a customer order and another Participant executes an order for a listed option at a price inferior to the best-published quote displayed on that exchange ("intermarket trade-through"); and (2) the procedures for monitoring restrictions on how often orders for the account of market makers ("Principal Orders") may be sent through the Linkage.

1. Satisfaction of Trade-Throughs

One of the main goals of the Linkage Plan is to limit the incidence of intermarket trade-throughs. As part of achieving this goal, the Linkage Plan provides that if a customer order is the best-published quote and a trade is executed at a worse price, the exchange representing that customer order may request compensation from the exchange that executed the trade-through.

Currently, the Linkage Plan requires that, to be compensated by another Participant, a Participant generally must lodge a complaint with that Participant within three minutes of the time that the transaction report was disseminated. The Linkage Plan requires that the complaint specify the number of customer contracts at the disseminated quotation that were traded-through. The Participant that traded through is then required to respond to the complaint, either by claiming an exception to liability⁵ or by taking corrective action. If no exception to liability applies, the Participant initiating the trade-through may either: (1) Send a Satisfaction Order⁶ to the Participant that sent the complaint; or (2) adjust the price of the trade to a price at which a trade-through would not have occurred.

The proposed amendment would simplify this procedure by combining the complaint and satisfaction process. Specifically, if a Participant identifies a trade-through by another exchange, that Participant would send a Satisfaction Order to the exchange that traded-through for the number of customer

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 240.11Aa3-2.

³ On July 28, 2000, the Commission approved a national market system plan ("Linkage Plan") for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, the Commission approved an amendment to the Linkage Plan. See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001).

⁵ The exceptions to liability are set forth in § 8(c)(iii) of the Linkage Plan.

⁶ A Satisfaction Order is currently defined in the Linkage Plan as an order for the principal account of a member who initiated a trade-through, sent through the linkage to satisfy the liability arising from that trade-through, section 2(16)(c) of the Linkage Plan. In Joint Proposed Amendment No. 2, the Participants propose to define a Satisfaction Order as an order sent through the linkage to notify a Participant of a trade-through and to seek satisfaction of liability arising from that trade-through. See Proposed amendments to § 2(16)(c) of the Linkage Plan.