upon which they are based and how each Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 405 (''know your customer rule'') regarding transactions in such Fixed Income ETFs. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[30] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Funds is consistent with Section 6(b)(5) of the Exchange Act.[31]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Investment Company Unit listing standards in Exchange Rule 703.16, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Investment Company Units, including Funds. Funds will be deemed equity securities subject to NYSE rules governing the trading of equity securities. These rules include: Dealings and Settlements Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Exchange Rule 80B, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, handling of orders and reports; duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans;[32] and Operation of Member Organization Rules and Communications with the Public Rules, such as conduct of accounts, margin rules, and advertising. [33] NYSE also will consider halting trading in any series of Investment Company Units under certain other circumstances including those set forth in Exchange Rule 717(b)(iv) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development and maintenance of a stock index upon which an ETF is based. Previously, the Commission noted the importance of an exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a fixed income securities index.[34] Goldman and Lehman each have procedures in place to prevent the misuse of material, non-public information regarding changes to component stocks to the Funds. [35] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices.

The Commission also believes that NYSE has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. NYSE has requested accelerated approval because the 1940 Act Application relating to the Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[36] The Application disclosed the characteristics and risks associated with the Funds. No comments were submitted and the Commission granted the relief requested in the Application.[37] The Funds will trade on the Exchange in the same manner as Investment Company Units previously approved by the Commission. Furthermore, the Commission notes that it recently granted accelerated approval to the request of the Amex to list and trade fixed income ETFs.[38] Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[39] that the proposed rule change, (File No. SR–NYSE 2002–26) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[40]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–20178 Filed 8–8–02; 8:45 am]

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[30] Exchange Rule 405.

[31] 15 U.S.C. 78f(b)(f).

[32] Exchange Rules 45–227.

[33] Exchange Rules 325–472.

[34] *See supra,* note 4.

[35] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[36] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[37] Investment Company Act Release No. 25622 (June 25, 2002).

[38] *See supra,* note 4.

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.3–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46306; File No. SR–NYSE–2002–28]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Certain Exchange Traded Funds (''ETFs'')

August 2, 2002.

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 24, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III 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 and is approving the proposal on an accelerated basis.

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

The NYSE proposes to trade on an unlisted trading privileges (''UTP''): (a) Vanguard Total Stock Market VIPERs, (b) iShares Russell 2000 Index Funds, (c) iShares Russell 2000 Value Index Funds and (d) iShares Russell 2000 Growth Index Funds (each an ''ETF'' and collectively ''ETFs''), each of which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

is a type of Investment Company Unit (''ICU'').

## 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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange has adopted listing standards applicable to ICUs which the Exchange states are consistent with the listing criteria currently used by the American Stock Exchange LLC (''Amex'') and other exchanges, and trading standards pursuant to which the Exchange may trade ICUs on the Exchange on an UTP basis.[3] The Exchange now proposes to trade the ETFs on a UTP basis. The ETFs have been listed and actively traded on the Amex[4] and trade on other securities exchanges and in the over-the-counter market. Each of the ETFs meets the ''generic'' listing criteria for ETFs set forth in Section 703.16 of the Manual and Exchange Rule 1100 (''generic listing criteria''), except that certain component stocks of each of the ETFs do not meet the volume requirement, as more fully described in Exhibit A of the Form 19b–4.[5] The information below is intended to provide a brief description of each ETF.[6]

*The Vanguard Total Stock Market VIPERs.* The shares of the Vanguard Total Stock Market VIPERs (''Vanguard Fund'') are based on the Wilshire 5000 Total Market Index (''Wilshire Index''), a domestic securities index. The Wilshire Index is market capitalization weighted. The Vanguard Index Funds, the issuer, is an open-ended management investment company operating nine separate investment portfolios or ''index funds.'' The Wilshire Index consists of stocks traded on the NYSE and AMEX and quoted on NASDAQ. The Vanguard Fund uses a ''passive,'' or indexing, approach to attempt to produce investment results that approximate the investment performance of the Wilshire Index. The Vanguard Fund will not hold all of the stocks that comprise the Wilshire Index, but will attempt to hold a representative sampling of the securities in the Wilshire Index that resembles the entire Wilshire Index. As of July 1, 2002, of those component stocks representing at least 90% of the weight of the Wilshire Index, four of the 1,774 component stocks of the Vanguard Fund did not meet the volume requirement of the generic listing criteria.[7]

*iShares Russell Funds.* The shares of the iShares Russell 2000 Index Fund are based on the Russell 2000 Index. The shares of the iShares Russell 2000 Value Index Fund are based on the Russell 2000 Value Index, and the shares of the iShares Russell 2000 Growth Index Fund are based on the Russell 2000 Growth Index (the iShares Russell 2000 Index Fund, iShares Russell 2000 Value Index Fund and the iShares Russell 2000 Growth Index Fund are collectively referred to as the ''iShares Russell Funds''). The Russell Indices are domestic securities indices. Each of the Russell Indices is market capitalization weighted. The iShares Trust, the issuer, is an open-ended management investment company operating 50 separate investment portfolios or ''index funds.'' The Russell Indices consist of stocks traded on the NYSE and AMEX and quoted on NASDAQ. Each of the iShares Russell Funds uses a ''passive,'' or indexing, approach to attempt to produce investment results that approximate the investment performance of the relevant Russell Index. The iShares Russell 2000 and Russell 2000 Value Index Funds will not hold all of the stocks that comprise the relevant Russell Index, but will attempt to hold a representative sampling of the securities in the relevant Russell Index that resembles the entire relevant Russell Index. The iShares Russell 2000 Growth Index Fund will invest in substantially all of the securities in the Russell 2000 Growth Index in approximately the same proportions as in the underlying Russell 2000 Growth Index. As of June 28, 2002, of those component stocks representing at least 90% of the weight of the index: (a) 51 of 1,243 component stocks of the iShares Russell 2000 Value Index Fund, (b) 32 of 1,218 component stocks of the iShares Russell 2000 Growth Index Fund, and (c) 75 of 1,878 component stocks of the iShares Russell 2000 Index Fund did not meet the volume requirement of the generic listing criteria.[8]

As with all ETFs, the Exchange will distribute an information circular to its members in connection with the trading of the ETFs. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the ETFs are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing shares of the ETFs prior to or concurrently with the confirmation of a transaction,[9] applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules. The

[3] In 1996, the Commission approved Section 703.16 of the *Exchange's Listed Company Manual* (''Manual''), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996). In 2000, the Commission also approved the Exchange's generic listing standards for the listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[4] Amex began trading the iShares Russell Funds in 2000 and the Vanguard Total Stock Market VIPERs in 2001. *See www.iShares.com; www.vanguard.com.*

[5] Section 703.16(b)(2)(b) of the Manual requires that ''the component stocks representing at least 90 percent of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.''

[6] The Exchange represents that much of the information in this filing was taken from the Prospectus of iShares Trust dated as of August 1, 2002, as supplemented, the Prospectus of The Vanguard Group dated as of April 26, 2002, as supplemented, and from the websites of the Amex (*www.Amex.com*), iShares (*www.iShares.com*) and Vanguard (*www.vanguard.com*). In addition, some information relating to the Vanguard Fund was taken from the Application for an Order under Section 6(c) of the Investment Company Act of 1940 for Certain Exemptions, Release No. IC–24680 (October 6, 2000). Fund information relating to Net Value Asset (''NAV''), returns, dividends, component stock holdings and the like are updated on a daily basis on the websites.

[7] *See www.Amextrader.com.* Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on August 2, 2002.

[8] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[9] The Commission has granted the iShares Russell Funds an exemption from Section 24(d) of the Investment Company Act of 1940. *See* Investment Company Act Release No. 25623 (June 25, 2002). The Commission granted the Vanguard Fund an exemption from Section 24(d) of the Investment Company Act of 1940. *See* Investment Company Act Release No. 24789 (December 12, 2000). Thus, the Exchange, in an Informational Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares Russell Funds or the Vanguard Fund. Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Application for the Order. Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

Exchange also intends to utilize its existing surveillance procedures to monitor trading in the ETFs, including surveilling specialist compliance with Exchange Rule 460.10, which contemplates specialists engaging in transactions with the ETF issuers under certain circumstances.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is existent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

*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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] The Commission believes that the Exchange's proposal to trade (a) Vanguard Fund, (b) iShares Russell 2000 Index Funds, (c) iShares Russell 2000 Value Index Funds and (d) iShares Russell 2000 Growth Index Funds pursuant to the UTP will provide investors with a convenient way of participating in the securities markets and could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,[14] and by increasing the availability of ETFs as an investment tool. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[15]

*A. Trading of the ETFs on NYSE Pursuant to UTP*

The Commission notes that, pursuant to Rule 12f–5 under the Act,[16] prior to trading a particular class or type of security pursuant to UTP, NYSE must have listing standards comparable to those of the primary market on which the security is listed. The Commission finds that adequate rules and procedures exist to govern the trading of the ETFs on NYSE, pursuant to UTP. ETF shares will be deemed equity securities subject to NYSE's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to the ETFs. In addition, Section 703.16 of the NYSE's *Manual* and Exchange Rule 1100 [17] which contain specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of the ETFs.[18] These criteria should help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in the ETFs traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend trading in the ETFs if circumstances warrant such action. Accordingly, the Commission believes that NYSE's equity rules in general, and Section 703.16 of the Manual and Exchange Rule 1100 in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.[19]

*B. Disclosure*

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the ETFs. All investors in the ETFs, including those purchasing the ETFs on NYSE pursuant to UTP, will receive a prospectus or a Product Description [20] regarding the product. The prospectus or Product Description will address the special characteristics of the ETFs, including a statement regarding their redeemability and method of creation, and that ETF shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular to all NYSE members prior to the commencement of trading of the ETFs explaining the unique characteristics and risks of the Funds. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the ETFs, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of

[10] The Exchange represents that Exchange Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. The Exchange further represents that Exceptions in the Rule permit specialists in ETF shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be affected on the same terms and conditions as any other investor, and only at the net asset value of the ETF shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the ETF shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in ETFs can redeem them in creation unit size aggregations only.

[15] In approving this rule, the commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.12f–5.

[17] The Commission approved generic rules for the listing and trading of ICUs on NYSE in 2000. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000).

[18] The Commission notes the listing and delisting criteria is similar to those adopted by Amex.

[19] The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of the ETFs on NYSE pursuant to UTP, making the ETFs more broadly available to the investing public.

[20] *See* Investment Company Release No. 25623 (June 25, 2002); Investment Company Release No. 24789 (December 12, 2000).

which it is a member, including suitability rules.[21] The circular will also address members' responsibility to deliver a prospectus to all investors purchasing the ETF, as well as highlight the characteristics of the ETF, including that ETF shares are only redeemable in Creation Unit size aggregation.[22]

*C. Dissemination of the Fund Portfolio Information*

The Commission believes that since Amex is disseminating an estimate of the Value (''Values'') of a share for the various ETFs, investors will be provided with timely and useful information concerning the value of the ETFs, on a per Fund basis. The Commission notes that the information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information is disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, irrespective of where the transaction is executed.[23] In addition, because the value is expected to closely track the applicable ETF, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given ETF.

*D. Surveillance*

The Commission notes that NYSE has submitted surveillance procedures for the ETFs and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

*E. Specialists*

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem ETF shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the Federal securities laws that may be applicable.[24]

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[25] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing of the ETFs on a UTP basis is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act,[26] to approve the proposal on the accelerated basis. The Commission further finds that accelerated approval will enable the Exchange to accommodate the timetable for trading ETFs on the Exchange.

**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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 the NYSE. All submissions should refer to the file number SR–NYSE–2002–28 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–20179 Filed 8–8–02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46312; File No. SR–OCC–2002–06]**

## Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustment Procedures for Security Futures

August 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 12, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The

[21] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[22] The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a–1, Rule 10b–10; Rule 14e–5; Rule 10b–17; Rule 11d1–2; Rules 15c1–5 and 15c1–6; and Rules 101 and 102 of Regulation M under the Exchange Act.

[23] Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

[24] The Commission notes that with respect to the ETFs, broker-dealers and other persons are cautioned in the prospectus and/or the ETF's Statement of Additional Information 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 of 1933.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(5).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).