the Board) to oversee Sub-Advisers and to recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or an Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-Adviser, shareholders will be furnished all information about the new Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. The applicable Trust or the Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a new Sub-Adviser, an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified to permit Aggregate Fee Disclosure.

7. The Adviser will provide general investment advisory services to the Funds, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, the Adviser will: (i) Set the Fund's overall investment strategies; (ii) Evaluate, select and recommend Sub-Advisers to manage all or part of each Fund's assets; (iii) when appropriate, allocate and reallocate each applicable Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the investment performance of the Sub-Advisers; and (v) ensure that the Sub-Advisers comply with each Fund's investment objectives, policies and restrictions, by among other things, implementing procedures reasonably designed to ensure compliance.

8. No trustee or officer of a Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

10. Each Trust will include in its registration statement the Aggregate Fee Disclosure for each Fund.

11. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

12. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–17082 Filed 10–13–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27511; 812–12993]

SSgA Funds Management, Inc., et al.; Notice of Application

October 6, 2006.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B), under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 6(c) of the Act to amend a previous order.

Summary of the Application: The order would permit certain management investment companies and unit investment trusts (''UITs'') registered under the Act to acquire shares (''Shares'') of certain open-end management investment companies and UITs registered under the Act that operate as exchange-traded funds and are outside of the same group of investment companies as the acquiring investment companies. The order also would amend a prior order (the ''Prior Order'') [1] to permit: (a) Dealers to sell Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 (''Securities Act''); (b) under certain circumstances, exchange-traded funds that track certain foreign equity securities indexes to pay redemption proceeds more than seven days after the tender of Shares (in large aggregations called ''Creation Units'') for redemption; and (c) additional exchange-traded funds that track certain foreign equity securities indexes to rely on the Prior Order. Further, the order would add certain representations and terms concerning the operations of exchange-traded funds that track certain foreign equity securities indexes, replace certain conditions, and add a condition, to the Prior Order.

Applicants: SSgA Funds Management, Inc. (the ''Adviser''), ALPS Distributors, Inc., and State Street Global Markets, LLC (each, a ''Distributor'' and together, the ''Distributors''), The Select Sector SPDR ®Trust (''Select Sector Trust''), streetTRACKS ® Series Trust (''Series Trust''), and streetTRACKS ® Index Shares Funds (''Index Shares Funds'') (each of Select Sector Trust, Series Trust, and Index Shares Funds, a ''Trust'' and collectively, the ''Trusts'').

DATES: The application was filed on July 29, 2003 and amended on August 3, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

[1] State Street Bank and Trust Company, *et al.*, Investment Company Act Release Nos. 24631 (Sept. 1, 2000) (notice) and 24666 (Sept. 25, 2000) (''Prior Order''), superseding The Select Sector SPDR Trust, *et al.*, Investment Company Act Release Nos. 23492 (Oct. 20, 1998) (notice) and 23534 (Nov. 13, 1998) (order).

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 October 31, 2006, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Scott M. Zoltowski, Esq., State Street Bank and Trust Company, Two Avenue de Lafayette–6th Floor, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (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 Public Reference Branch, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act, each of which consists of separate series that seek to provide investment results that correspond generally to the price and yield performance or total return of, its specified equity securities index (an ''Index'') and operate as exchange-traded funds. Index Shares Funds is the only Trust that currently offers series based on Indexes comprised of foreign equity securities (''Foreign Indexes'').[2] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Trust. ALPS Distributors, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') serves as the principal underwriter for each series of Select Sector Trust. State Street Global Markets, LLC, a broker-dealer registered under the Exchange Act, serves as the principal underwriter for each series of Series Trust and Index Shares Funds.

2. Applicants request an exemption under section 12(d)(1)(J) of the Act to permit certain management investment companies and UITs registered under the Act to acquire Shares beyond the limitations in sections 12(d)(1)(A) and (B). Applicants request that the relief apply to (a) each open-end management investment company or UIT registered under the Act that operates as an exchange-traded fund, is currently or subsequently part of the same ''group of investment companies'' as the Trusts within the meaning of section 12(d)(1)(G)(ii) of the Act, and is advised or sponsored by the Adviser or an entity controlling, controlled by or under common control with the Adviser (such registered management investment companies are referred to as ''Open-End ETFs''; such registered UITs are referred to as ''UIT ETFs''; Open-End ETFs and UIT ETFs are collectively referred to as ''ETFs''),[3] as well as any principal underwriter of an Open-End ETF or broker or dealer registered under the Exchange Act (''Broker'') selling Shares of an ETF to an Investing Fund (as defined below); and (b) each management investment company or UIT registered under the Act that is not part of the same ''group of investment companies'' as the ETFs within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a participation agreement with an ETF (such management investment companies are referred to as ''Investing Management Companies''; such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Investing Funds'').[4] Each Investing Trust will have a sponsor (''Sponsor''). Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (''Investing Fund Adviser'') and may be advised by investment adviser(s) within the meaning of section 2(a)(20)(B) of the Act (''Investing Fund Subadviser''). Any investment adviser to any Investing Management Company will be registered as an investment adviser under the Advisers Act or exempt from registration. In addition, applicants request relief from sections 17(a)(1) and 17(a)(2) of the Act to permit the ETFs that are or become affiliated persons of an Investing Fund to sell Shares to, and redeem Shares from the Investing Fund.

3. Applicants also request relief under section 6(c) of the Act to amend the Prior Order to: (a) Add exemptions from sections 22(e) and 24(d) of the Act; (b) replace certain conditions and add a new condition, to the Prior Order; (c) add certain terms and representations concerning the creation and redemption of Creation Units of ETFs that track Foreign Indexes (''Foreign ETFs''), as described in the application; (d) permit Foreign ETFs to invest in depositary receipts as component securities and/or alternatives to component securities of the relevant Foreign Index[5]; and (e) permit additional series of Index Shares Funds that would track Foreign Indexes (''New Foreign ETFs''; included in the term ''Foreign ETFs'')[6] to rely on the Prior Order. Applicants assert that the New Foreign ETFs will operate in a manner substantially similar to the existing Foreign ETFs and will comply with all of the terms and conditions of the Prior Order, as amended.

Applicants' Legal Analysis

1. 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, from any provision of the

[2] These series, streetTRACKS® Dow Jones STOXX 50 Fund and streetTRACKS® Dow Jones EURO STOXX 50 Fund, currently operate in reliance on an order that is not the Prior Order. If the requested order is granted, those series will operate in reliance on the Prior Order, as amended.

[3] Investing Funds do not include the ETFs. All existing ETFs are open-end management investment companies.

[4] 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 ETFs and not in any other registered investment company.

[5] Any depositary receipts held by a Foreign ETF will be negotiable securities that represent ownership of a non-U.S. company's publicly traded stock. Depositary receipts will typically be American depositary receipts, but may include Global depositary receipts, and Euro depositary receipts. The Adviser may include depositary receipts on the list of deposit securities of an ETF when holding the depositary receipt will improve liquidity, tradability, or settlement for a Foreign ETF and may treat the depositary receipt of a component security of the Foreign Index as a component security for purposes of applicants' representations related to the percentage of assets of a Foreign ETF that will be invested in component securities.

[6] The Foreign Indexes for the New Foreign ETFs are S&P/Citigroup BMI World ex-US Index, S&P/Citigroup BMI EPAC Index, S&P/Citigroup BMI Europe Index, S&P/Citigroup BMI Asia Pacific Index, S&P/Citigroup BMI Emerging Markets Index, S&P/Citigroup BMI Latin America Index, S&P/Citigroup BMI Middle-East & Africa Index, S&P/Citigroup BMI European Emerging Index, S&P/Citigroup BMI Asia Pacific Emerging Index, S&P/Citigroup BMI China Index, S&P/Citigroup BMI World ex-US Cap Range < 2 Billion USD Index, MSCI ACWI ex-US Index, Russell/Nomura PRIME™ Index, Russell/Nomura Small Cap™ Index, Dow Jones Wilshire ex-US Real Estate Securities Index, and Macquarie Global Infrastructure 100 Index.

Act, 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes thereof, from any of the provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act 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 fair and reasonable 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.

Section 12(d)(1) of the Act

2. 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 Exchange Act, 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 acquired company's voting stock to be owned by investment companies generally. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire Shares in an ETF beyond the limits of section 12(d)(1)(A) and Open-end ETFs and any principal underwriter of an Open-end ETF or Broker to sell Shares of Open-end ETFs to the Investing Funds beyond the limits set forth in sections 12(d)(1)(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 believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the ETFs.[7] To limit the control that an Investing Fund may have over an ETF, applicants propose a condition prohibiting the Investing Fund Adviser or Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund Adviser Group'') from controlling (individually or in the aggregate) an ETF within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Investing Fund Subadviser, any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the ETFs, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end ETF or sponsor to a UIT ETF) will cause an ETF to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor of the Investing Fund, or a person which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor is an affiliated person (except any person whose relationship to the ETF is covered by section 10(f) of the Act is not an Underwriting Affiliate).

5. Applicants do not believe the proposed arrangement will involve excessive layering of fees. 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 to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Open-end ETF in which the Investing Management Company may invest. In addition, an Investing Fund Adviser or trustee (''Trustee'') or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust, as applicable, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end ETF under rule 12b–1 under the Act) received from an ETF by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than advisory fees paid to the Adviser or its affiliated person by an ETF, in connection with the investment by the Investing Management Company or Investing Trust, as applicable, in the ETF. Applicants state that any sales charges or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no ETF may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants also represent that to ensure that Investing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Investing Fund that intends to invest in an ETF in reliance on the requested order will be required to enter into a participation agreement between the relevant Trust on behalf of the ETF(s) and the Investing Fund. The participation agreement will require the Investing Fund to adhere to the terms

[7] An ''Investing Fund Affiliate'' is an Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter, principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. An ''ETF Affiliate'' is the investment adviser(s), promoter, sponsor, and principal underwriter of an ETF, and any person controlling, controlled by, or under common control with any of those entities.

and conditions of the requested order. The participation agreement also will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the ETFs and not in any other investment company. The participation agreement will further require any Investing Fund that exceeds the 5% or 10% limitations in sections 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.

Section 17(a) of the Act

7. 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.

8. Applicants seek relief from section 17(a) to permit an ETF that is an affiliated person of an Investing Fund because the Investing Fund holds 5% or more of the ETF's Shares to sell its Shares to and redeem its Shares from an Investing Fund (and to engage in in-kind transactions in conjunction with those sales and redemptions).[8] Applicants believe that any proposed transactions directly between ETFs and Investing Funds will be consistent with the policies of each ETF and Investing Fund. The participation agreement will require any Investing Fund that purchases Creation Units directly from an ETF to represent that the purchase of Creation Units from an ETF by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement.[9]

Section 22(e) of the Act

9. Applicants seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the Foreign ETFs is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign ETFs. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign ETFs. Applicants request relief under section 6(c) from section 22(e) in such circumstances to allow the Foreign ETFs to pay redemption proceeds up to 14 calendar days after the tender of a Creation Unit for redemption. At all other times and except as disclosed in the relevant prospectus and/or statement of additional information (''SAI''), applicants expect that each Foreign ETF will be able to deliver redemption proceeds within seven days.[10] With respect to future Foreign ETFs, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

10. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign ETF.

Section 24(d) of the Act

11. Applicants seek to amend the Prior Order to add relief from section 24(d) of the Act. Section 24(d) 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 relief under section 6(c) from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[11]

12. Applicants state that Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Shares will be listed on the American Stock Exchange, the New York Stock Exchange or another national securities exchange as defined in section 2(a)(26) of the Act (each, a ''Stock Exchange''), prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume is 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 is published daily in the financial section of newspapers.

[8] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of shares of an ETF or (b) an affiliated person of an ETF, or an affiliated person of such person, for the sale by the ETF of its shares to an Investing Fund is subject to section 17(e) of the Act. The participation agreement also will include this acknowledgment.

[9] Applicants believe that an Investing Fund will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from an ETF. Nonetheless, an Investing Fund that owns 5% or more of an ETF could seek to transact in Creation Units directly with an ETF pursuant to the section 17(a) relief requested.

[10] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[11] Applicants state that they are not seeking seek relief from the prospectus delivery requirement for non-secondary market transactions, such as when an investor purchases Shares from the relevant Trust or an underwriter. Applicants state that the prospectus will caution broker-dealers and others purchasing Creation Units that some activities on their part, depending on the circumstances, may 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 relevant Distributor, breaks them down into the constituent Shares and sells them directly to its customers, or if it chooses to couple the creation of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. 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 dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares 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.

In addition, the ETFs' websites will include a downloadable form of the prospectus for each ETF and additional quantitative information that is updated on a daily basis, including daily trading volume, closing price, the net asset value (''NAV'') for each ETF and information about the premiums and discounts at which the Shares have traded.

13. Applicants will arrange for broker-dealers selling Shares in the secondary market to provide purchasers with a product description (''Product Description'') that describes, in plain English, the relevant Trust and the Shares it issues. Applicants state that a Product Description is not intended to substitute for a full prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Shares in the secondary market.

Conditions to Prior Order

14. Applicants also seek to amend the Prior Order by replacing existing conditions 2, 5, and 6 to the Prior Order and adding a new condition.. Existing condition 2 to the Prior Order currently provides that each ETF's prospectus will clearly disclose that, for purposes of the Act, shares are issued by the ETF and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act. In light of the requested order to permit Investing Funds to invest in ETFs in excess of the limits of section 12(d)(1), applicants wish to replace this condition in the Prior Order with condition 13, as stated below.

15. Existing condition 5 to the Prior Order provides that the website for each Trust, which will be publicly available at no charge, will contain the following information, on a per Share basis, for each ETF: (a) the prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

16. Existing condition 6 to the Prior Order provides that the prospectus and annual report for each ETF will also include: (a) The information listed in existing 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 ETFs): (i) The cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Index.

17. Conditions 14 and 15, as stated below, would replace conditions 5 and 6 to the Prior Order, respectively. Under the new conditions, each ETF would use the mid-point of the bid/ask spread at the time of calculation of its NAV (the ''Bid/Ask Price'') instead of the Shares'' closing price for certain aspects of the data presentation required by the conditions.[12]

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief from sections 12(d)(1)(A) and (B) will be subject to the following conditions:

1. The members of the Investing Fund Adviser Group will not control (individually or in the aggregate) an ETF within the meaning of section 2(a)(9) of the Act. The members of an Investing Fund Subadviser Group will not control (individually or in the aggregate) an ETF 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 ETF, the Investing Fund Adviser Group or the Investing Fund Subadviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an ETF, it will vote its shares of the ETF in the same proportion as the vote of all other holders of the ETF's shares. This condition does not apply to the Investing Fund Subadviser Group with respect to an ETF for which the Investing Fund Subadviser or a person controlling, controlled by, or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end ETF) or as the sponsor (in the case of a UIT ETF).

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in an ETF to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the ETF or an ETF 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 Investing Fund Adviser and any Investing Fund Subadviser are 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 ETF or an ETF Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an ETF exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of directors/trustees of an Open-end ETF, including a majority of the disinterested board members, will determine that any consideration paid by an Open-end ETF 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 ETF; (ii) is within the range of consideration that the Open-end ETF 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. This condition does not apply with respect to any services or transactions between an Open-end ETF and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor of an Investing Trust, will waive fees otherwise payable to it by the Investing Management Company or Investing Trust, as applicable, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Open-end ETF under rule 12b–1 under the Act) received from an ETF by the Investing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, Trustee or Sponsor, or its affiliated person by the ETF, in connection with the investment by the Investing Management Company or Investing Trust, as applicable, in the ETF. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an ETF by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser

[12] The Bid/Ask Price of an ETF is determined using the highest bid and the lowest offer on the Stock Exchange as of the time of the calculation of such ETF's NAV. The records relating to Bid/Ask Prices will be retained by the ETFs and their service providers.

or its affiliated person by the ETF, in connection with any investment by the Investing Management Company in the ETF made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end ETF or sponsor to a UIT ETF) will cause an ETF to purchase a security in any Affiliated Underwriting.

7. The board of an Open-end ETF, including a majority of the disinterested board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Open-end ETF in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Open-end ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Open-end ETF 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 the Open-end ETF. The board of the Open-end ETF will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Open-end ETF; (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-ETF in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Open-end ETF will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Open-end ETF 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 of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Open-end ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, 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 determinations of the board of the Open-end ETF were made.

9. Before investing in an ETF in excess of the limit in section 12(d)(1)(A), each Investing Fund and the ETF will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s), or their sponsors or trustees, 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 a Open-end ETF in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Open-end ETF of the investment. At such time, the Investing Fund will also transmit to the Open-end ETF a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Open-end ETF of any changes to the list of the names as soon as reasonably practicable after a change occurs. The ETF and the Investing Fund will maintain and preserve a copy of the order, the agreement, and, in the case of an Open-end ETF, the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, 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 independent directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end ETF 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 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 NASD.

12. No ETF will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

Applicants agree that conditions 2, 5 and 6 to the Prior Order, respectively, will be replaced with the following conditions:

13. Each ETF's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the ETF, which is a registered investment company, and the acquisition of Shares 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 registered investment companies to invest in an ETF beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the ETF regarding the terms of the investment.

14. The Web site for each ETF, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each ETF: (a) The prior business day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the 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 ETF will state that the Web site for the ETF has information about the premiums and discounts at which the ETF's Shares have traded.

15. The prospectus and annual report for each ETF will also include: (a) Data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, (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 ETF): (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 Index.

Applicants agree to add the following condition to the Prior Order:

16. Before an ETF may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, a Stock Exchange rule

requiring Stock Exchange members and member organizations effecting transactions in Shares of such ETF to deliver a Product Description to purchasers of Shares.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17060 Filed 10–13–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 16, 2006:

An Open Meeting will be held on Wednesday, October 18, 2006 at 10 a.m. in Room L–002, the Auditorium.

The subject matter of the Open Meeting scheduled for Wednesday, October 18, 2006, will be:

The Commission will consider whether to adopt amendments to the best-price rule for issuer and third-party tender offers under the Securities Exchange Act of 1934. The amendments would clarify that the best-price rule applies only with respect to the consideration offered and paid for securities tendered in a tender offer and should not apply to consideration offered and paid according to employment compensation, severance or other employee benefit arrangements entered into with security holders of the issuer or subject company.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–8718 Filed 10–12–06; 10:55 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54580; File No. SR–ISE–2006–40]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of the Second Market

October 6, 2006.

I. Introduction

On July 5, 2006, the International Securities Exchange, LLC (f/k/a the International Securities Exchange, Inc.) (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to establish a ''Second Market'' for the listing and trading of low-volume option classes. On August 16, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2006.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to adopt rules for the listing and trading of low-volume option classes that qualify for listing under existing Exchange standards in a ''Second Market.'' Historically, the Exchange has elected to refrain from trading many option classes that qualify for trading on the ISE, but are characterized by low average daily trading volumes (''ADVs'') on the other option exchanges.

A. Listing in the Second Market

Under the proposal, the Exchange would be able to list in the Second Market equity option classes (excluding options on exchange traded funds) that trade on other option exchange(s) that are characterized by an ADV below 500 contracts over the previous six-month period. The proposed rules would allow the Exchange to list equity option classes with an ADV of over 1,500 contracts only in the existing market (the ''First Market''), and would trade such classes pursuant to existing ISE rules. The Exchange would be able to list option classes with an ADV between 500 and 1,500 contracts initially in either market. Starting one year after the Exchange initiates trading in the Second Market, the Exchange would review the market in which option classes are listed every three months, and option classes would be moved from the First to the Second Market when their ADV in the prior six-month period falls below 300 contracts, and moved from the Second to the First Market when their ADV in the prior six-month period exceeds 750 contracts.

B. Participation as Market Makers in the Second Market

Under the proposal, all members approved to operate ISE market maker memberships would be eligible to be Competitive Market Makers in the Second Market (''SMCMMs''). In addition, members that are only approved as Electronic Access Members (''EAMs'') may also register as SMCMMs.[5] Only Primary Market Makers in the First Market may be Primary Market Makers in the Second Market (''SMPMMs'').

As in the First Market, a primary market maker would be appointed for each class traded in the Second Market. SMPMMs would be subject to all the same obligations in their appointed options as Primary Market Makers in the First Market, including, among other things, entering continuous quotations in each series of every option class to which they are appointed and satisfying requirements related to the Plan for Creating and Operating an Intermarket Option Linkage. Similar to Primary Market Makers in the First Market, SMPMMs would be permitted to execute no more than 10% of their volume in Second Market option classes to which they are not assigned.

For purposes of existing Exchange rules relating to market maker obligations, SMCMMs will be considered ''appointed'' to all option classes listed in the Second Market and will be able to choose whether to make markets in any option class listed in the Second Market on a daily basis. Unlike Competitive Market Makers in the First Market, SMCMMs would not be required to enter continuous quotations in a minimum number or percentage of assigned option classes. An SMCMM will be required to continuously quote

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54340 (August 21, 2006), 71 FR 51240.

[5] Under the proposed rules, members that are only EAMs that want to become SMCMMs would be required to complete the same market maker application and meet the same standards that are applied to Competitive Market Makers under the Exchange's existing rules. Members that are only EAMs are not eligible to be SMPMMs.