

further enhancements to the odd-lot execution procedures.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### *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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

Amex requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> and

designate the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue operating through June 30, 2006 without interruption.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2006-002 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2006-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-002 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-698 Filed 1-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53130; File No. SR-Amex-2005-072]

### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Listing and Trading of Shares of the iShares® Silver Trust**

January 17, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") 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 by the Amex. On September 15, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to list and trade under Amex Rules 1200A *et seq.*,

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 to the proposed rule change clarifies the valuation procedure that would be used by the Bank of New York to determine the daily value of the silver contained in the iShares® Silver Trust.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. Amex has requested that the Commission waive the five-day pre-filing notice requirement. The Commission granted Amex's request.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the iShares® Silver Trust shares (the “Silver Shares” or “Shares”).<sup>4</sup>

## 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 Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The Exchange proposes to list and trade the iShares Silver Trust (the “Silver Trust” or “Trust”) shares that represent beneficial ownership interests in the net assets of the Trust consisting primarily of silver bullion (“silver”). The Exchange states that the Trust will not be actively managed, and therefore, a holder of Silver Shares will not be hedged to protect against the price volatility of the underlying silver.

Under Amex Rule 1201A, the Exchange may approve for listing and trading Commodity-Based Trust Shares on an underlying commodity.<sup>5</sup> Accordingly, the Amex proposes to list for trading Silver Shares under Exchange Rule 1200A et. seq.<sup>6</sup>

**Introduction.** In January 2005, the Exchange adopted rules for the listing and trading of “Commodity-Based Trust Shares.”<sup>7</sup> Commodity-Based Trust Shares (the “Commodity Shares”) are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. Commodity Shares are a form of trust issued receipt (“TIR”)<sup>8</sup> that instead of holding one or

more discrete securities will hold one or more physical commodities. The Exchange has listed the iShares COMEX Gold Trust<sup>9</sup> and trades pursuant to unlisted trading privileges (“UTP”), the streetTRACKS Gold Trust,<sup>10</sup> as Commodity-Based Trust Shares pursuant to Exchange Rules 1200A et seq.

The Exchange may list and trade the Silver Shares pursuant to Amex Rules 1200A et seq. subject to Commission review and approval. The Silver Shares will conform to the initial and continued listing criteria under Amex Rule 1202A.<sup>11</sup> The Silver Trust will be formed under a depositary trust agreement, among Bank of New York, as Trustee; Barclays Global Investors International, Inc. (“Barclays” or “Sponsor”), the Sponsor; all depositors, if any; and the holders of Silver Shares.<sup>12</sup>

The Exchange notes that the Commission has permitted the listing and trading of products linked to the performance of an underlying commodity or commodities.<sup>13</sup>

In some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. Under Amex Rule 1201, the Exchange may approve for listing and trading TIRs based on one or more securities. The Exchange defines a “security” or “securities” to include stocks, bonds, options, and other interests or instruments commonly known as securities. See Article I, Section 3(j) of the Amex Constitution.

<sup>9</sup> See *supra* note 7.

<sup>10</sup> See Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005) (approving the UTP trading of the streetTRACKS Gold Shares).

<sup>11</sup> The initial listing standards set forth in Amex Rule 1202A(a) provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section “Criteria for Initial and Continued Listing,” the Exchange expects the minimum number of Silver Shares required to be outstanding at the time of trading to be 150,000. This section, *infra*, specifically details the initial and continued listing standards for the Silver Trust.

<sup>12</sup> The trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (the “1940 Act”).

<sup>13</sup> See Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving the listing and trading of streetTRACKS Gold Shares); 43427 (October 10, 2000), 65 FR 62783 (October 19, 2000) (approving the listing and trading of inflation indexed securities); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (approving the listing and trading of commodity index preferred or debt securities (ComPS) on various agricultural futures contracts and commodities indexes); 36885 (February 26, 1996), 61 FR 8315 (March 4, 1996) (approving the listing and trading of ComPS linked to the value of single commodity); and 35518 (March 21, 1995), 60

**Description of the Silver Market.** The silver market is a global marketplace consisting of both over-the-counter (“OTC”) transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options. Set forth below, the Exchange has provided a description of each of the OTC and exchange-traded markets for silver as well as a summary of their respective regulatory structures.

**The OTC Market.** The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global silver trading. Specifically, the London OTC market is the largest silver clearing market. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer’s buy and sell prices. The Exchange believes the period of greatest liquidity in the silver market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the Commodity Exchange, Inc. (“COMEX”).<sup>14</sup> This period lasts for approximately five (5) hours<sup>15</sup> each New York business day, from 8:25 a.m.–1:25 p.m. Eastern Time (“ET”).<sup>16</sup>

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making

FR 15804 (March 27, 1995) (approving the listing and trading of commodity indexed notes or COINS). See also Central Fund of Canada (Registration No. 033–15180) (closed-end fund listed and traded on the Amex that invests in silver) and Salmon Phibro Oil Trust (Registration No. 033–33823) (trust units listed and traded on the Amex that held the right to a forward contract for the delivery of crude oil).

<sup>14</sup> COMEX is a division of the New York Mercantile Exchange, Inc. (“NYMEX”) where silver futures contracts and related options are traded.

<sup>15</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>16</sup> The Exchange submits that Silver Shares may be used as a price discovery mechanism for silver from 1:25 p.m. to 4:15 p.m. ET. The open outcry trading hours of the COMEX silver futures contract is from 8:25 a.m. to 1:25 p.m. ET Monday through Friday. NYMEX ACCESS(r), an electronic trading system, is open for price discovery on COMEX silver futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning ET; and from 7 p.m. Sunday night until Monday morning at 8 a.m. ET.

<sup>4</sup> iShares® is a registered trademark of Barclays Global Investors, N.A.

<sup>5</sup> Amex Rule 1200A(b)(2) defines “commodity” as set forth in Section 1(a)(4) of the Commodity Exchange Act (“CEA”).

<sup>6</sup> See applicable Amex Rules 1200A, 1201A, 1202A, 1203A, 1204A, and 1205A.

<sup>7</sup> See Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares COMEX Gold Trust).

<sup>8</sup> A Trust Issued Receipt or “TIR” is defined in Exchange Rule 1200(b) as a security (a) that is issued by a trust that holds specified securities deposited with the trust; (b) that, when aggregated

members of the London Bullion Market Association ("LBMA"), the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market.<sup>17</sup> The current market-making members of the LBMA are: Bank of Nova Scotia-ScotiaMocatta, Barclays Bank Plc, Deutsche Bank AG, HSBC Bank USA (London branch), Goldman Sachs International, JPMorganChase Bank, Royal Bank of Canada Ltd., Societe Generale, and UBS AG. JPMorganChase Bank NA (London branch) is an affiliate of the custodian for the Trust. Barclays Bank Plc is an affiliate of the Sponsor and the Initial Purchaser, Barclays Capital, Inc. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery, and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London (the largest market), New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the LBMA.

The Exchange indicates that there are no authoritative published figures for overall worldwide volume in silver trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.<sup>18</sup> The Exchange notes that the monthly average daily volume figures published by the LBMA for 2004 range from, a high of 143.4 million to a low of 75.5 million troy ounces per day. Through May 2005, the monthly average daily volume has ranged from a high of 152.1 million to a low of 76.9 million. The COMEX also publishes price and volume statistics for exchange-traded transactions in contracts for the future

delivery of silver (and related options).<sup>19</sup>

*The London Bullion Market and the London "Fix" Process.* Although the market for physical silver is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the Exchange notes that the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the "London Good Delivery Lists," which are the lists of LBMA accredited melters and assayers of silver. The LBMA also coordinates market clearing and vaulting, promotes good trading practices, and develops standard documentation for such clearing and warehousing activities. The LBMA also publishes "The Good Delivery Rules for Gold and Silver Bars," the specifications for gold and silver bars acceptable for delivery in settlement of a transaction on the London market. Silver bars meeting these requirements are referred to herein as "London Good Delivery Bars." The silver spot price always refers to that of a London Good Delivery Bar, unless otherwise specified. In the OTC market, business is generally conducted over the phone and through a widely used electronic dealing system.

A London silver "fix" is conducted each trading day at 12 p.m. London time (7 a.m. ET) providing reference silver prices for that day's trading.<sup>20</sup> The

Exchange notes that many long-term contracts are priced on the basis of the London silver fix and market participants will usually refer to the London silver fix when looking for a basis for valuation. The Exchange believes that the London fix is the most widely used benchmark for daily silver prices and is quoted by various financial information sources.

*Futures Exchanges.* The Exchange states that the most significant silver futures exchanges are the COMEX and the Tokyo Commodity Exchange ("TOCOM").<sup>21</sup> Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs on these exchanges are negotiable. The Exchange represents that as a matter of practice, only a small percentage of the future market turnover ever comes to physical delivery of the silver represented by the contracts traded. Both COMEX and TOCOM permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

*Silver Market Regulation.* There is no direct regulation of the global OTC market in silver. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Market Act of 2000 ("FSM Act"). The Exchange states that under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards and deposits of silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the U.S. OTC market for silver are

<sup>17</sup> Further information about the LBMA may be found at <http://www.lbma.org.uk>. There are currently nine (9) market-making members of the LBMA, five of which offer clearing services, and 51 full members.

<sup>18</sup> Information regarding clearing volume estimates by the LBMA can be found at [http://www.lbma.org.uk/clearing\\_table.htm](http://www.lbma.org.uk/clearing_table.htm). The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

<sup>19</sup> Information regarding price and average daily volume on the COMEX can be found at [http://www.nymex.com/jsp/markets.md\\_annual\\_volume.jsp](http://www.nymex.com/jsp/markets.md_annual_volume.jsp).

<sup>20</sup> Formal participation in the London silver fix is limited to three (3) LBMA members, each of which is a bullion dealer. The chairmanship of the London silver fix committee is The Bank of Nova Scotia—ScotiaMocatta. The fix takes place by telephone at 12:00 p.m. London time and also has a web-based commentary. The other members of the London silver fix are currently Deutsche Bank AG and HSBC Bank USA, NA. Any other market participant wishing to participate in trading on the fix is required to do so through one of these three (3) dealers. Clients place orders either with one of the three (3) fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a "trying price," reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms that have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The silver price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. Barclays and the Exchange believe that the London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

<sup>21</sup> There are other silver exchange markets, such as the London Metals Exchange, the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodities Futures Trading Commission ("CFTC"), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

**Product Description.** 1. *Creation and Redemption Process.* Issuances of Silver Shares will be made only in baskets of 50,000 shares or multiples thereof (the "Basket Aggregations" or "Baskets").<sup>22</sup> The Trust will issue and redeem Basket Aggregations on a continuous basis, by or through registered broker-dealers that have entered into participant agreements (each, an "Authorized Participant")<sup>23</sup> with the Sponsor and the Trustee, Bank of New York ("BNY").<sup>24</sup> Following issuance, the Shares will be traded on the Exchange similar to other equity securities, such as shares of the iShares COMEX Gold Trust and the streetTRACKS Gold Trust.<sup>25</sup>

Basket Aggregations of Shares will be issued as an in-kind exchange for a corresponding amount of silver. The basket amount of silver, measured in ounces (the "Basket Silver Amount") will be determined on each business day by the Trustee, BNY.<sup>26</sup> Authorized

Participants that wish to purchase a Basket must transfer the Basket Silver Amount to the Trust in exchange for a Basket of Shares. Authorized Participants that wish to redeem a Basket of Shares will receive the Basket Silver Amount in exchange for each Basket surrendered. JP Morgan Chase Bank, N.A., London Branch ("JP Morgan Chase" or "Custodian") will be the custodian for the Trust and responsible for safekeeping the silver.<sup>27</sup> Silver deposited with JP Morgan Chase must meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of silver bars as set forth in "The Good Delivery Rules for Silver and Silver Bars" published by the LBMA.

On each business day, BNY will make available immediately prior to the opening of trading on the Amex, the Indicative Basket Silver Amount for the creation of a Basket.<sup>28</sup> BNY will adjust the quantity of silver included in the Basket Silver Amount (determined shortly after 4 p.m.) to reflect sales of silver to cover expenses and any loss of deposited silver that may occur since the previous calculation. The Amex will disseminate at least every 15 seconds throughout the trading day, via the facilities of the CTA, an amount representing on a per share basis, the current value of the Basket Silver Amount, known as the "Indicative Trust Amount." It is anticipated that the deposit of silver in exchange for Silver Shares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical shares that will be listed and traded on the Amex.<sup>29</sup> Silver Shares are expected to be traded on the Exchange

gems and drugs. In that system, a pound is 16 ounces and an ounce is 16 drams.

<sup>27</sup> If the total value of the Trust's silver held by the Custodian exceeds \$1 billion, then the Custodian will be under no obligation to accept additional silver deliveries. In such a case, the trustee will retain an additional custodian.

<sup>28</sup> The Sponsor will also make the next day's Indicative Basket Silver Amount available on the Trust Web site (<http://www.iShares.com>) shortly after 4 p.m. ET each business day. The Basket Silver Amount, Indicative Basket Silver Amount, and net asset value ("NAV") will be publicly available simultaneously to all market participants (to avoid any informational advantage) on either the Trust Web site or Amex Web site. These items will also be communicated to Authorized Participants via facsimile or electronic mail message. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>29</sup> Silver Shares are separate and distinct from the underlying silver comprising the portfolio of the Silver Trust. The Exchange expects that the number of outstanding Silver Shares will increase and decrease as a result of in-kind deposits and withdrawals of the underlying silver.

by professionals, as well as institutional and retail investors. Silver Shares may be acquired in two (2) ways: (1) Through a deposit of the Basket Silver Amount with BNY during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors.

The Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Silver Shares to constitute a Basket Aggregation (*i.e.*, 50,000 shares). An Authorized Participant redeeming a Basket Aggregation will receive the silver amount of the Basket Silver Amount announced by the Trustee. Upon the surrender of the Shares and payment of applicable Trustee's fee and any expenses, taxes or charges, BNY will deliver to the redeeming Authorized Participant the amount of silver corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, silver will then be delivered to the redeeming Authorized Participants in the form of physical bars only. Silver Shares will be registered in book entry form through DTC.

The Exchange states that the Basket Silver Amount necessary for the creation of a Basket will slightly diminish each day depending on the Trust's daily expense accrual. The initial Basket Silver Amount is 500,000 ounces of silver (with each Share initially representing 10 ounces of Silver). On each day that the Amex is open for regular trading, BNY will adjust the quantity of silver constituting the Basket Silver Amount as appropriate to reflect sales of silver needed for payment of the Sponsor's fee (which is similar to an expense ratio)<sup>30</sup> and any extraordinary expenses or liabilities not assumed by the Sponsor. BNY will determine the Basket Silver Amount for a given business day by subtracting the daily expense accrual from the previous day's total ounces of silver in the Trust and then dividing by the number of Baskets outstanding. Fractions of an

<sup>30</sup> The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's fee, the Custodian's fee, Amex listing fees, SEC registration fees, printing and mailing costs, audit fees and expenses and up to \$100,000 per annum in legal fees and expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the iShares, including applicable SEC registration fees. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>22</sup> Initially, each Share represents 10 ounces of silver. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.

<sup>23</sup> An "Authorized Participant" is a person, who at the time of submitting to the Trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company ("DTC") Participant or an Indirect Participant and (iii) has in effect a valid Authorized Participant Agreement.

<sup>24</sup> BNY will charge a transaction fee in connection with the redemption and/or creation of Baskets. In addition, Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 shares of the Trust that compose the initial Baskets.

<sup>25</sup> See *supra* notes 7 and 10.

<sup>26</sup> A troy ounce, equal to 1.0971428 ounces avoirdupois, with a minimum fineness of 0.999. "Avoirdupois" is the system of weights used in the U.S. and U.K. for goods other than precious metals,

ounce of silver smaller than .001 will be disregarded.

The creation/redemption process in connection with the Silver Shares is an in-kind exchange of silver for Shares, rather than an exchange of silver for cash. Except for the accrual of the Sponsor's fee or extraordinary expenses or liabilities, the process is based entirely on the delivery of silver in exchange for Shares. Thus, throughout each business day, the Exchange states that the actual number of ounces required for the Basket Silver Amount usually will not change even though the value of the Basket Silver Amount may change based on the market price of silver.

2. *Determination of NAV, Basket Silver Amount, and Indicative Basket Amount.* Shortly after 4 p.m. (ET) each business day, the BNY will determine the NAV of the Trust, utilizing that day's announced London silver fix price (unless the Sponsor, in consultation with the Trustee, determines that an alternative publicly available pricing benchmark more fairly represents the commercial value of the silver held by the Trust).<sup>31</sup> Once the value of the silver is determined, BNY will then determine an "adjusted NAV" by subtracting all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets (*i.e.*, the Sponsor's fee)), expenses, and other liabilities of the Trust from the total value of silver and all other assets of the Trust. This adjusted NAV is then used to compute the Sponsor's fees that are calculated from the value of Trust assets. Then to determine the final NAV, BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. BNY will calculate the NAV per share by dividing the NAV by

the number of Silver Shares outstanding.

After the NAV is determined, at or about 4 p.m. each business day, BNY will then determine the Basket Silver Amount for orders placed by Authorized Participants received before 4 p.m. that day. BNY will also at the same time determine an "Indicative Basket Silver Amount" that Authorized Participants can use as an indicative amount of silver to be deposited for issuance of the Silver Shares on the next business day. Thus, although Authorized Participants place orders to purchase Silver Shares throughout the trading day, the actual Basket Silver Amount is determined at 4 p.m. or shortly thereafter.

Shortly after 4 p.m. each business day, BNY and the Sponsor will disseminate the NAV for the Silver Shares, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount. The Basket Silver Amount, the Indicative Basket Silver Amount, and the NAV are communicated by BNY to all Authorized Participants via facsimile or electronic mail message and on the Trust's Web site at <http://www.ishares.com>. The Amex will also disclose the NAV, Basket Silver Amount, and Indicative Basket Silver Amount on its Web site.

The Sponsor fee, in the absence of any extraordinary expenses and liabilities, is established at 0.50% of the net assets of the Trust. As a result, assuming there is no extraordinary movement in the intraday market price of silver, the amount of silver by which the Basket Silver Amount will decrease each day will be predictable (*i.e.*,  $\frac{1}{365}$  of the net asset value of the Trust multiplied by 0.50%). Given the anticipated predictability of the daily decline in the Basket Silver Amount, as stated, BNY will disclose and disseminate the Indicative Basket Silver Amount for the next business day shortly after 4 p.m. Authorized Participants may use the Indicative Basket Silver Amount as guidance regarding the amount of silver expected to be deposited with the custodian, JP Morgan Chase, in connection with the issuance of Silver Shares on the next business day.

As a result, the amount of silver required for the Basket Silver Amount is not disseminated during the trading day to correspond to changes in the value of silver as measured by spot silver prices.<sup>32</sup> Before 4 p.m., the Authorized

Participants may use the Indicative Basket Silver Amount published by the Sponsor and BNY the day before as guidance in respect of the amount of silver that they may expect to be required to deposit. But if the Indicative Basket Silver Amount published by the Sponsor and BNY turns out to be incorrect (for example, because the Trust incurred an extraordinary expense such as legal fees in excess of the amount assumed by the Sponsor), the amount actually determined by BNY will control.

3. *Liquidity.* The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by the non-concurrent trading hours between the major silver markets and the Amex. While the Silver Shares will trade on the Exchange until 4:15 p.m. ET, liquidity in the OTC market for silver will be reduced after the close of the major world silver markets, including London, Zurich, and the COMEX. As a result, trading spreads and the resulting premium or discount on the Silver Shares may widen as a result of reduced liquidity.<sup>33</sup>

The Exchange believes that Silver Shares will not trade at a material discount or premium to the underlying silver held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Basket Aggregations, the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. If the price of the Shares deviates enough from the price of silver to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the silver that underlies them, an arbitrageur may buy the Shares at a discount, immediately redeem them in exchange for silver, and sell the silver in the cash market at a profit. If the Shares are expensive compared to the silver that underlies them, an arbitrageur may sell the Shares short, buy enough silver to acquire the number of Shares sold short, acquire the Shares through the creation process, and

trading day that represents an indicative value for the Silver Shares based on the silver spot price.

<sup>33</sup> As noted above in the section titled "Description of the Silver Market," the period of greatest liquidity in the silver market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in New York, London, Zurich and other centers coincides with futures and options trading on the COMEX division of the NYMEX. This period lasts for approximately four hours each New York business day morning.

<sup>31</sup> In Amendment No. 1, Amex clarified that if there is no London silver fix price on that day, the BNY will use the most recently announced London silver fix price unless the BNY, in consultation, with Barclays Global Investors International, Inc. ("Barclays"), determines such London silver fix price to be inappropriate.

Barclays, in consultation with the BNY, may determine that an alternative publicly available pricing benchmark more fairly represents the commercial value of silver held by the Trust. In the case of a temporary disruption of the London silver fix price, the Exchange believes that it is unnecessary for a filing pursuant to Section 19(b) under the Act to be submitted to the Commission. The Exchange submits that for a temporary disruption of the London silver fix, a determination by Barclays, in consultation with the BNY, to use an alternative pricing source for silver, is appropriate. However, the Exchange represents that if the use of an alternative pricing source for the London silver fix price is more than of a temporary nature, a rule filing will be submitted pursuant to Section 19(b) of the Act.

<sup>32</sup> The Amex will disseminate an "Indicative Trust Value" at least every 15 seconds during the

deliver the Shares to close out the short position. In both instances, the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying silver.

*Availability of Information Regarding Silver Prices.* Although the spot price of silver will not be disseminated over the facilities of CTA, the last sale price for the Shares, as is the case for all equity securities traded on the Exchange will be disseminated over the CTA's Network B. In addition, there is a considerable amount of silver price and market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis silver pricing information based on the spot price of an ounce of silver from various financial information service providers, such as Reuters and Bloomberg. In addition, the daily London silver fix is also disseminated by various market data vendors and is available from the LBMA's Web site. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of silver and last sale prices of silver futures contracts and related options, as well as information about news and developments in the silver market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on silver prices directly from market participants.<sup>34</sup> Complete real-time data for silver futures contracts and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg and also on a delayed basis free of charge on the NYMEX Web site at <http://www.nymex.com>. The Exchange also notes that there are a variety of other public Web sites providing information on silver, ranging from those specializing in precious metals to sites maintained by major

newspapers, such as *The Wall Street Journal*. Current silver spot prices are also generally available with bid/ask spreads from silver bullion dealers.

The Amex, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price (*i.e.*, real time information) of silver on its own public Web site at <http://www.amex.com>.<sup>35</sup>

*Availability of Information Regarding Silver Shares.* The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price<sup>36</sup> in relation to the NAV as of the time the NAV is calculated (the "Bid-Asked Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Basket Silver Amount; (f) the Indicative Basket Silver Amount; (g) the Prospectus; and (h) other applicable quantitative information.

As described above, the NAV for the Trust will be calculated and disseminated daily. The Amex also intends to disseminate for the Trust on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Trust Value (as discussed below), recent NAV, and shares outstanding. As stated, the Trust Web site will also provide a real time indicative silver spot price through The Bullion Desk at <http://www.thebulliondesk.com>, which will be used to calculate the Indicative Trust Value.<sup>37</sup> Notwithstanding that they will

be provided free of charge, the indicative spot price from BullionDesk.com and the Indicative Trust Value per Share will be provided essentially on a real-time basis.<sup>38</sup> The Exchange will also make available on its Web site daily trading volume, closing prices, NAV, and the Basket Silver Amount. The London silver fix price is readily available from the LBMA at <http://www.lbma.org.uk>, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange will provide a hyperlink on its Web site at <http://www.amex.com> to the Trust's Web site at <http://www.ishares.com>.

*Dissemination of Indicative Trust Value.* As noted above, BNY calculates the NAV of the Silver Trust once each trading day. In addition, BNY causes to be made available on a daily basis the required amount of silver to be deposited in connection with the issuance of Silver Shares in Basket Aggregations. In addition, other investors can request such information directly from the BNY.

In order to provide updated information relating to the Trust for use by investors, professionals, and Authorized Persons wishing to create or redeem Silver Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Trust Value (the "Indicative Trust Value"). The Indicative Trust Value will be disseminated on a per Silver Share basis at least every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. ET. The Indicative Trust Value will be calculated based on the amount of silver required for creations and redemptions and a price of silver derived from updated bids and offers indicative of the spot price of silver.<sup>39</sup> The Indicative Trust Value on a per Silver Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Trust Value based on the amount of silver required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with Silver Shares trading on the Exchange or the creation or redemption of Silver Shares.

<sup>34</sup> In addition, EBS also provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot silver, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. EBS was launched in September 1993 by a group of the world's largest foreign exchange market making banks. The Exchange states that EBS is the pre-eminent provider of precious metals and foreign exchange trading solutions to the precious metals and interbank spot foreign exchange community. Approximately 500,000 ounces in gold, 4 million ounces in silver and \$110 billion a day in spot foreign exchange transactions is traded each day over the EBS trading platform. The shareholders of EBS include the subsidiaries of the following organizations: ABN AMRO, Bank of America, Barclays, Citibank, Commerzbank, Credit Suisse First Boston, Lehman Brothers, HSBC, JPMorgan Chase, The Royal Bank of Scotland, S-E-Banken, UBS AG and the Minex Corporation of Japan. See <http://www.ebs.com>.

<sup>35</sup> The Trust Web site's silver spot price will be provided by The Bullion Desk at <http://www.thebulliondesk.com>. The Amex will provide a link to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Sponsor, Custodian or the Exchange. The silver spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate, as noted above in the discussion titled "Availability of Information Regarding Silver Prices," that there are other sources for obtaining the silver spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source and the intraday indicative value of the Shares, the Exchange will delist the shares. See "Criteria for Initial and Continued Listing," below.

<sup>36</sup> The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

<sup>37</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of

Market Regulation, Commission, on January 13, 2006.

<sup>38</sup> The Trust Web site is expected to indicate that these values are subject to an average delay of 5 to 10 seconds.

<sup>39</sup> See *supra* note 29.

In addition, the Trust's Web site at <http://www.ishares.com> will also provide from The Bullion Desk continuously updated bids and offers indicative of the spot price of silver in the OTC market for the purpose of disclosing to investors on a real-time basis the underlying or spot price of silver.

**Termination Events.** The Trust will be terminated if any of the following circumstances occur: (1) The Silver Shares are delisted from the Amex and are not listed for trading on another national securities exchange within five business days from the date the Silver Shares are delisted; (2) holders of at least 75% of the outstanding Silver Shares notify the Trustee that they elect to terminate the trust; (3) the Trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the Sponsor of its intent to resign; (4) the Commission finds that the Trust should be registered as an investment company under the Investment Company Act of 1940, and the Trustee has actual knowledge of the Commission finding; (5) the aggregate market capitalization of the Trust, based upon the closing price for the Silver Trust, was less than \$350 million on each of five (5) consecutive trading days and the Trustee receives, within six (6) months from the last of those trading days, notice that the Sponsor has decided to terminate the Trust; (6) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act and the Trustee has actual knowledge of that determination; or (7) the Trust fails to qualify for treatment, or ceases to be treated, as a grantor trust for U.S. federal income tax purposes and the Trustee receives notice that the Sponsor has determined that the termination of the Trust is advisable.

If not terminated earlier by the trustee, the Trust will terminate in 2045 on a date to be determined once the Trust is established. Upon termination of the Trust, holders of the Silver Shares will surrender their shares and receive from the Trustee their portion of the underlying silver.

**Criteria for Initial and Continued Listing.** The Trust will be subject to the criteria in Amex Rules 1201A and 1202A for initial and continued listing of Silver Shares. The continued listing criteria provides for the delisting or removal from listing of the Silver Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Silver Shares: (i) If the Trust has more than 60 days remaining

until termination and there are fewer than 50 record and/or beneficial holders of the Silver Shares for 30 or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Silver Shares issued and outstanding; or (iii) if the market value of all Silver Shares is less than \$1,000,000.

- If the value of the underlying silver is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated silver value.

- The Indicative Trust Value is no longer made available on at least a 15-second delayed basis.

- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 150,000 Silver Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issues receipts and exchange-traded funds ("ETFs"). It is anticipated that the initial price of a Silver Share will be approximately \$91.<sup>40</sup> The Exchange believes that the anticipated minimum number of Silver Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Trust's objective to seek to provide a simple and cost effective means of making an investment similar to an investment in silver.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Securities Exchange Act of 1934 (the "1934 Act").<sup>41</sup>

**Original and Annual Listing Fees.** The Amex original listing fee applicable to the listing of the Silver Trust is \$5,000. In addition, the annual listing fee applicable under section 141 of the Amex Company Guide ("Company Guide") will be based upon the year-end aggregate number of shares in all series of Silver Trusts outstanding at the end of each calendar year.

<sup>40</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (updating initial price of a Silver Share that initially will represent 10 ounces of silver).

<sup>41</sup> See Rule 10A-3(c)(7) under the 1934 Act.

**Trading Rules.** Silver Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in Silver Shares. Silver Shares will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i-v). The Exchange has designated Silver Shares as eligible for this treatment.<sup>42</sup>

Silver Shares will be deemed "Eligible Securities", as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of Silver Shares made in connection with the creation and redemption of Silver Shares will not be subject to the prohibitions of Amex Rule 190.<sup>43</sup> Unless exemptive or no-action relief is available, Silver Shares will be subject to the short sale rule, Rule 10a-1 and Regulation SHO under the Act.<sup>44</sup> If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Silver Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on "plus ticks" and sell on "minus ticks," in order to bring the Silver Shares into parity with the underlying

<sup>42</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

<sup>43</sup> See Commentary .05 to Amex Rule 190.

<sup>44</sup> The Silver Trust has requested relief in connection with the trading of Silver Shares from the operation of the short sale rule, Rule 10a-1 and Regulation SHO under the Act.



silver and/or futures price. Commentary .01 to Amex Rule 1203A sets forth this limited exception to Amex Rule 170.

Amex Rule 1203A relating to certain specialist prohibitions addresses potential conflicts of interest in connection with acting as a specialist in the Silver Shares. Specifically, Amex Rule 1203A provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Silver Shares so that the specialist or affiliated person may not act or function as a market maker in the underlying silver, related silver futures contract or option or any other related silver derivative. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying silver, related silver futures or options, or any other related silver derivative. In particular, Amex Rule 1203A provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Silver Shares on another market center, in the underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives.

Amex Rule 1204A(a) provides that the member organization acting as specialist in Commodity-Based Trust Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (see Rule 170). In addition, the member organization acting as specialist in Commodity-Based Trust Shares must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in Commodity-Based Trust Shares shall trade in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a member organization acting as specialist,

directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.<sup>45</sup>

Amex Rule 1204A(b) also ensures that specialists handling the Silver Shares provide the Exchange with all the necessary information relating to their trading in physical silver, related silver futures contracts and options thereon or any other silver derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations, and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization, as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Amex Rule 1204A(c) also prohibits the specialist in the Silver Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical silver, silver futures contracts, options on silver futures, or any other silver derivative (including the Silver Shares).<sup>46</sup>

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in Silver Shares. First, the Circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the Circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange may halt trading in Silver Shares if conditions in the underlying silver market have caused disruptions and/or lack of trading. Third, with respect to a halt in trading that is not

specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. The Exchange will halt trading in the Shares if the Trust Web site (to which Amex will link) ceases to provide: (1) The value of the silver updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange, or (2) the Indicative Trust Value per Share updated at least every 15 seconds.<sup>47</sup>

*Information Circular.* The Amex will distribute an Information Circular (the "Circular") to its members in connection with the trading of Silver Shares. 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 Silver Shares are, notify members and member organization about the procedures for creation and redemption of Silver Shares in a basket, the requirement, as described below, that members and member firms deliver a prospectus to investors purchasing the Silver Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per share Indicative Trust Value, NAV, and other information pertaining to the Shares, including trading information, trading halt procedures, and applicable suitability rules. For example, in the Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of Silver Shares in Basket Aggregations are described in the Prospectus and that Silver Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof. Similarly, the Information Circular will advise members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Silver Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. Amex members purchasing Silver Shares from

<sup>45</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(a)).

<sup>46</sup> Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006 (inserting discussion of Amex Rule 1204A(c)).

<sup>47</sup> In the event such spot price of silver or Indicative Trust Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 13, 2006.



the Trust for resale to investors will deliver a prospectus to such investors.

The Circular will also explain that the Silver Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of silver required to create a basket or to be delivered upon a redemption of a basket will gradually decrease over time because the Silver Shares comprising a basket will represent a decreasing amount of silver due to the sale of the Silver Trust's silver to pay Trust expenses. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Silver Shares. The Exchange notes that pursuant to Amex Rule 411 (Duty to Know and Approve Customers), members and member organizations are required in connection with recommending transactions in the Silver Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

The Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

**Surveillance.** The Exchange represents that its surveillance procedures applicable to trading in the proposed Silver Shares will be similar to those applicable to the iShares COMEX Gold Trust, the streetTRACKS Gold Trust, trust issued receipts, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. For intermarket surveillance purposes, the Exchange currently has in place an Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to COMEX silver futures contracts. The Exchange submits that its surveillance procedures are adequate to properly monitor the trading of the Shares.

Also, as noted above, the Exchange states that Amex Rule 1204A(b), which requires that the specialist handling the Silver Shares provide the Exchange with information relating to its trading in physical silver, silver futures contracts, options on silver futures, or any other silver derivative, will facilitate

surveillance of specialist handling Silver Shares.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>48</sup> in general, and furthers the objectives of section 6(b)(5)<sup>49</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, would 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*

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>48</sup> 15 U.S.C. 78f(b).

<sup>49</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2005-072 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2005-072 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>50</sup>

**Nancy M. Morris,**  
Secretary.

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**BILLING CODE 8010-01-P**

<sup>50</sup> 17 CFR 200.30-3(a)(12).