Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized index options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Asian Markets Index options and full-value and reduced-value Asian Markets Index LEAPS.

C. Surveillance

The Commission notes that predominantly because of the lack of relevant market information sharing agreements, the shares of only one of the closed-end funds contained in the Index (Asia Pacific Fund) are eligible for standardized options trading.39 The Commission believes, however, that based on the maintenance criteria discussed above, the CBOE has addressed the concerns that the Commission expressed in approving the listing of options on individual country funds. 40 These maintenance criteria, among other things, ensure that the Index will not become a surrogate for trading options on either the closed-end mutual funds represented in the Index or individual Asian market securities held by those component mutual funds for which standardized options could not otherwise be traded and minimize the potential for manipulation of the value of the Index.41

Second, in approving the listing of options on individual country funds, the Commission determined that if a fund is "diversified," as defined in the Investment Advisers Act of 1940 ("Advisers Act"),⁴² and holds securities from five or more countries, a surveillance sharing agreement is not required between the Exchange and the primary foreign markets for the securities held by the closed-end fund. In that case, it was determined that the portfolio of such a closed-end fund would be significantly diverse so as to reduce the likelihood that the price of

the securities issued by the closed-end fund could be manipulated. Even though the shares of only one of the closed-end funds contained in the Index is classified as "diversified," the Commission believes that by combining the securities of these mutual funds together in the Index, the Index, as a whole, replicates essentially a "diversified" fund. Specifically, the Index consists of securities representing 15 closed-end mutual funds with those mutual funds holding positions, in aggregate, in more than 180 different stocks from more than 10 emerging Asian markets. 43 The Commission believes, therefore, that the Index as a whole achieves the diversity of holds that the Commission found to be sufficient in the Country Fund Approval Order to minimize the Commission's concerns about potential manipulation. As a result, for the reasons stated herein and in the Country Fund Approval Order,44 the Commission believes that the lack of market surveillance sharing agreements does not raise substantial regulatory concerns.
Third, because the Index is composed

solely of the securities issued by closedend mutual funds, the Commission's concerns regarding potential manipulation of the Index are further reduced. As discussed in the Country Fund Approval Order, in contrast to other foreign securities products, international closed-end mutual funds hold portfolios of securities chosen by portfolio managers. 45 Although the composition of the portfolio of each mutual fund represented in the Index is published on a semiannual basis, the securities held by each mutual fund represented in the Index can be changed at any time at the discretion of the portfolio managers, as long as their investment decisions are consistent with the stated investment objectives and policies of the particular closed-end fund. For these reasons, the Commission believes that it generally would be difficult for someone to use options on the Index to attempt a manipulation of the market for any particular security issued by a closed-end fund represented in the Index or to attempt a manipulation of the Index through a manipulation of the shares of the mutual funds comprising the Index.

The Commission notes that generally the only people who could attempt such a manipulation would be people who have access to "inside" information about the composition of the portfolio of

a closed-end fund and the trading activities of the mutual fund's portfolio manager. The Advisers Act, and the rules promulgated thereunder, contain provisions designed to detect and deter certain advisory employees and affiliates from trading in any securities based on "inside" information about the investment decisions of a closed-end fund. Rule 204-2(a)(12) under the Advisers Act requires an investment adviser to make and keep accurate records of every transaction in a security in which the investment adviser or any advisory representative has a beneficial interest. Accordingly, the Commission believes that the Advisers Act gives it the authority to review the trading activities of anyone who is likely to have access to the information necessary to use options on the Index to attempt a manipulation of the relevant markets.

Finally, even though the CBOE does not in this case have market information sharing agreements with each of the relevant foreign markets, the CBOE, NYSE, Amex, and NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information regarding the trading of the mutual fund securities comprising the Index.46 The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value Index LEAPS less readily susceptible to manipulation.47

D. Market Impact

The Commission believes that the listing and trading on the CBOE of Asian Markets Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the markets for the securities issued by the closed-end funds represented in the Index. ⁴⁸ First, as described above, the securities of no one closed-end fund or group of closed-end funds represented in the Index dominates the weight of the Index. Second, the maintenance criteria for the Index ensure that: (1) the Index will be substantially comprised of closed-end fund securities that satisfy

³⁹ Options on the securities issued by international funds are eligible for standardized options trading where those securities meet or exceed the Exchange's established uniform options listing standards (see supra note 16) and (1) the Exchange has a market information sharing agreement with the primary home exchange on which each of the foreign securities comprising the fund's portfolio trade, (2) the fund is classified as a diversified fund, as that term is defined by Section 5(b) of the Investment Company Act, 15 U.S.C. § 80a-5(b), and the fund's portfolio is composed of securities from five or more countries, or (3) the listing of a particular international fund option is specifically approved by the Commission See Securities Exchange Act Release No. 33068 (October 19, 1993), 58 FR 55093 (October 25, 1993) ("Country Fund Approval Order").

⁴⁰ *Id*.

⁴¹ See supra Section III.A.

^{42 15} U.S.C. 80b-1 et. seq. (1988).

⁴³ See August 15 Letter, supra note 12.

⁴⁴ See Country Fund Approval Order, supra note 39.

⁴⁵ *Id*.

⁴⁶ See supra note 32.

⁴⁷ See, e.g., Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing of Index options and Index LEAPS on the CBOE Biotech Index).

⁴⁸ In addition, the CBOE has represented that the CBOE and the OPRA have the necessary systems capacity to support those new series of Index options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Scott Lyden, CBOE, dated June 27, 1994.