("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 23 closed-end mutual funds with those mutual funds holding positions, in aggregate, in more than 270 different stocks from more than 14 emerging Asian and Latin American markets. 43 The Commission believes, therefore, that the Index as a whole achieves the diversity of holdings 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 agreement 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 manger. The Advisors 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 advisor 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 Emerging 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 or 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 the Exchange's listing standards for standardized options trading; and (2) no individual security held by one or more of the mutual funds represented in the Index and no individual country represented by those holdings will dominate the Index.49 Third, because the securities issued by each of the closed-end funds comprising the Index must be "reported securities" as defined in Rule 11Aa3-1 of the Act, the securities issued by these closed-end funds generally will be actively-traded, highly-capitalized securities. Fourth, the 10,500 contract position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns.

Lastly, the Commission believes that settling expiring Emerging Markets Index options, including full-value and reduced-value Index LEAPS, based on the opening prices of the closed-end fund securities comprising the Index is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for the closed-end fund securities underlying options on the Index. 50

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides objective maintenance criteria which, for the reasons stated above, should minimize the potential for manipulation of the Index and the closed-end mutual fund securities comprising the Index. Further, as discussed above, the Commission believes that these maintenance criteria significantly strengthen the customer protection and surveillance aspects of the proposal, as originally proposed.⁵¹ Moreover, the

⁴² 15 U.S.C. 80b–1 et seq. (1988).

⁴³ See August 16 Letter, *supra* note 12.

⁴⁴ See Country Fund Approval Order, *supra* note 39.

⁴⁵ *Id*.

 $^{^{46}\,\}mathrm{See}\ supra$ note 32.

⁴⁷See, *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.

⁴⁹ See supra Section III.A.

 $^{^{50}\,\}mathrm{See}$ Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

⁵¹ See supra Section III.A.