

of more than three years.⁹ The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market. The Commission believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-99-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41983; International Series Release No. 1206; File No. SR-PCX-98-29]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to the Listing and Trading of Investment Company Units, Including World Equity Benchmark Shares ("WEBS")

October 6, 1999.

I. Introduction

On June 18, 1998, the Pacific Exchange, Inc. ("Exchange" or "PCX") 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 proposed rule change to adopt rules governing the listing and trading of Investment Company Units, including World Equity Benchmark Shares ("WEBSTM").³ The proposed rule change was published for comment in the **Federal Register** on November 3, 1998.⁴ The Commission did not receive any comments on the

proposal. The Exchange submitted Amendment No. 1 to the proposal on May 13, 1999.⁵ This order approves the amended proposed rule change and accelerates approval of Amendment No. 1.

II. Description of the Proposal

A. Standards for Listing and Trading Investment Company Units

The Exchange seeks to adopt new rules to accommodate the trading of Investment Company Units ("Units"), whether by Exchange listing or pursuant to unlisted trading privileges.⁶ A Unit is a security that represents an interest in a registered investment company ("Investment Company"), which Investment Company is organized as a unit investment trust, open-end management investment company, or similar entity.

Under the Exchange's proposed listing standards, an Investment Company that issues Units must: (i) hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities; or (ii) hold securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities. An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

In addition, the Investment Company must issue Units in a specified aggregate number in return for a deposit ("Deposit"). The Deposit must consist of: (i) a specified number of shares of securities that comprise the index or portfolio, or are otherwise based on or represent an investment in securities

comprising such index or portfolio, and/or a cash amount; or (ii) shares of a registered investment company, which investment company holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, and/or a cash amount. Units must be redeemable, directly or indirectly, from the Investment Company for securities and/or cash then comprising the Deposit.⁷ Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges. At least 300,000 Units must be outstanding before trading in a series of such Units may begin on the Exchange.

Each series of Units traded on the Exchange must be based on a specified index or portfolio of securities. The value of the index or portfolio must be calculated and disseminated to the public at least once per business day.⁸ However, if the securities representing at least half the value of the index or portfolio are securities of a single country other than the United States, the value of the index or portfolio may be calculated and disseminated to the public at least once per business day in that country. Units may be either certified or issued in the form of a single global certificate.

The Exchange would be permitted to consider suspending trading and delisting (if applicable) a series of Units if: (i) after the initial twelve-month period beginning upon the commencement of trading of a series of Units, there are fewer than 50 record and/or beneficial holders of Units for 30 or more consecutive trading days; (ii) the value of the index or portfolio of securities on which the series is based is no longer calculated or available; or (iii) such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings

⁷ For example, as discussed below in Section II(B), WEBS are only redeemable from the Foreign Fund, Inc. in "Creation Unit" sizes. See note 11 *infra* and accompanying text for a description of the various Creation Unit sizes.

⁸ The Commission generally believes that updating values on a real-time basis throughout the trading day is essential to any securities product. In this regard, the Commission notes that the Exchange will also disseminate an indicative optimized portfolio value ("Value"), which closely approximates the value of the portfolio of securities comprising each WEBS series, at least every fifteen seconds during regular trading hours. While the Values disseminated by the Exchange will not be the official values for the portfolios of securities comprising each WEBS series, the Values are designed to accurately reflect the value of each WEBS portfolio and to provide investors with timely access to important market information during trading hours.

⁹ Telephone conversation between Vincent Patton, Assistant Vice-President, Structured Securities, NYSE, and Nancy Sanow, Senior Special Counsel, Division, Commission on July 8, 1999.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

⁴ See Securities Exchange Act Release No. 40603 (Oct. 26, 1998), 63 FR 59354 (Nov. 3, 1998).

⁵ In Amendment No. 1, the Exchange: (i) provided confidential surveillance procedures; (ii) stated its intent to trade WEBS pursuant to unlisted trading privileges; (iii) proposed to delay the trading of Malaysian WEBS due to Malaysian currency restrictions; (iv) provided rule language clarifying that Exchange specialists may redeem or create WEBS only on the same terms and conditions as any other investor and only at the net asset value; (v) explained how the Exchange will review the creation or redemption of WEBS by Exchange specialists; (vi) specified how the net asset values for Index Series will be disseminated; and (vii) confirmed that Exchange members may rely on certain exemptive and no-action relief that the Commission previously provided to the American Stock Exchange. See Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, Exchange, to Michael A. Walinskas, Associate Director, Division of Market Regulation Commission, dated May 11, 1999 ("Amendment No. 1").

⁶ Pursuant to Section 12(f) of the Act and the rules thereunder, a national securities exchange may extend unlisted trading privileges to a security listed and registered on another national securities exchange if certain conditions are satisfied. See 15 U.S.C. 781(f) and 17 CFR 240.12f-1, 12f-2, 12f-3, 12f-4, and 12f-5.

on the Exchange inadvisable. In addition, the Exchange would be allowed to remove Units from trading and listing (if applicable) upon termination of the issuing Investment Company or upon the termination of listing of the Units on their primary market, if the primary market is not the Exchange.

B. Trading of WEBS

Upon approval of the proposed rule change, the Exchange intends to trade a specific class of Units—WEBS—pursuant to unlisted trading privileges. WEBS are issued by Foreign Fund, Inc. (“Fund”) and are structured as shares of separate series (“Index Series”). Each Index Series invests primarily in the equity securities traded in a designated market in an effort to track the performance of a specified equity market index.

Currently, the Fund offers seventeen WEBS Index Series based on seventeen Morgan Stanley Capital International (“MSCI”) Indices (individually “MSCI Index” and collectively “MSCI Indices”). The countries whose exchange markets are represented by the seventeen MSCI Indices are: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia,⁹ Mexico, Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. The Commission has already approved proposed rule changes to accommodate the listing and trading of these seventeen WEBS series on the American Stock Exchange (“Amex”) and to permit the trading of the WEBS series on the Chicago Stock Exchange (“CHX”) pursuant to unlisted trading privileges.¹⁰ Both the Amex and CHX

⁹ Although the Exchange seeks approval to trade the Malaysia Index Series WEBS pursuant to unlisted trading privileges, the Exchange will not immediately trade such WEBS due to Malaysian currency restrictions. The Exchange will notify the Commission before the start of trading in Malaysian Index Series WEBS and, if required, will submit a rule filing under Section 19(b) of the Act. See Amendment No. 1 *supra* note 5.

¹⁰ See Securities Exchange Act Release Nos. 36947 (Mar. 8, 1996), 61 FR 10606 (Mar. 14, 1996) (approval of the Amex’s request to list and trade Index Fund Shares, including WEBS); and 39117 (Sept. 22, 1997), 62 FR 50973 (Sept. 29, 1997) (approval of the CHX’s request to trade WEBS pursuant to unlisted trading privileges). The Commission notes that the Amex has filed a proposed rule change to list for trading eleven additional WEBS based on MSCI Indices for Brazil, Greece, Indonesia, South Korea, Portugal, South Africa, Taiwan, Thailand, Turkey, the United States, and the EMU (European Economic and Monetary Union). The Amex’s proposal is still pending with the Commission. See Securities Exchange Act Release No. 41322 (Apr. 22, 1999), 64 FR 23138 (Apr. 29, 1999).

currently trade all seventeen WEBS series.

The investment objective of each WEBS series is to provide investment results that correspond generally to the aggregate price and yield performance of publicly traded securities in particular markets, as represented by specific MSCI Indices. Each WEBS series will use a “passive” or indexing investment approach, which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures.

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representative sample of the securities comprising the MSCI Index in a technique known as “portfolio sampling.”

The Fund will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series (each aggregation is a “Creation Unit”). The number of shares per Creation Unit will range from 40,000 to 600,000.¹¹ Following the issuance of WEBS in Creation Unit aggregations, WEBS may be traded on the Exchange in lots of any size.

C. Structure of the MSCI Indices

MSCI generally seeks to have 60% of the capitalization of a country’s stock market reflected in the MSCI Index for such country. The MSCI Indices seek to balance the inclusiveness of an “all share” index against the replicability of a “blue chip” index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

All single-country MSCI Indices are market capitalization weighted. For countries that restrict foreign ownership, MSCI calculates two types of indices: the MSCI Index and an additional index call the “Free Index.” The Free Index excludes companies and

¹¹ The number of shares per Creation Unit for the seventeen WEBS are: (1) Australia Index Series: 200,000; (2) Austria Index Series: 100,000; (3) Belgium Index Series: 40,000; (4) Canada Index Series: 100,000; (5) France Index Series: 200,000; (6) Germany Index Series: 300,000; (7) Hong Kong Index Series: 75,000; (8) Italy Index Series: 150,000; (9) Japan Index Series: 600,000; (10) Malaysia Index Series: 75,000; (11) Mexico (Free) Index Series: 100,000; (12) Netherlands Index Series: 50,000; (13) Singapore (Free) Index Series: 100,000; (14) Spain Index Series: 75,000; (15) Sweden Index Series: 75,000; (16) Switzerland Index Series: 125,000; and (17) United Kingdom Index Series: 200,000.

share classes that may not be purchased by foreigners. MSCI currently calculates Free Indices for Singapore and Mexico, and for those regional and international indices which include such markets. The Singapore and Mexico WEBS series will be based on the Free Indices for those countries.

All MSCI Indices are calculated daily. The calculation method weights stocks in an MSCI Index by their beginning-of-period market capitalization. Share prices are “swept clean” daily and adjusted for any rights issues, stock dividends, or splits. The MSCI Indices presently are calculated in each market’s local currency,¹² in U.S. dollars, without dividends, and with dividends reinvested.

Each MSCI Index underlying a WEBS series is calculated by MSCI for each trading day in the applicable market based on official closing prices taken from the predominant exchange in such market. For each trading day, MSCI publicly disseminates each MSCI Index value for the previous day’s close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.

The Fund will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series. Also included will be information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation (“NSCC”) participant requesting such information. In addition, such information may be requested directly from the Fund Distributor.

D. Disclosure to Market Participants

The Fund Administrator, PFPC, Inc., will calculate the net asset value (“NAV”) for each Index Series each trading day as of 4:00 P.M., Eastern Standard Time. The NAVs will be made available to the public by the Fund Distributor by means of a toll-free number and will also be accessible to

¹² To obtain foreign currency exchange rates, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. Because of the high volatility of currencies in some Latin American countries, MSCI continues to calculate its own rates for those countries. Under exception circumstances MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters Closing Spot Rate is not believed to be representative for a given currency on a particular day.

NSCC participants through NSCC data. In addition, the NAVs will be provided to the Exchange by NSCC, and disseminated through the Exchange's Computerized Order Access System ("P/COAST").

The Exchange will provide current WEBS pricing information by disseminating through the facilities of the Consolidated Tape Association ("CTA") an indicative optimized portfolio value ("Value") for each Index Series as calculated by Bloomberg, L.P. The Value will be disseminated on a per WEBS basis every fifteen seconds during the Exchange's regular trading hours.¹³

Before the start of trading in WEBS, the Exchange will distribute to its members an information circular that discusses the special characteristics and risks of trading WEBS. The circular will discuss the basic structure of WEBS, creation and redemption over WEBS, prospectus delivery to investors purchasing WEBS, applicable Exchange rules (e.g., suitability rule), and dissemination of trading information. The Exchange will use existing and proposed surveillance procedures to surveil trading in WEBS, including specialist compliance with Exchange Rule 5.33(a), "Specialist Trading," and proposed Commentaries .02 and .03 to Exchange Rule 5.33(a), which contemplate specialists engaging in transactions with the issuer of WEBS under certain circumstances.¹⁴

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

¹³The Exchange recognizes that each Value is unlikely to reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Exchange believes that the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series at a particular moment. Therefore, the Exchange believes that the Value for each WEBS series disseminated during Exchange trading hours should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day. The Exchange recognizes, however, that during the trading day the Value will closely approximate the value, per WEBS share, of the portfolio of securities for each WEBS series, except under unusual circumstances.

¹⁴Proposed Commentary .02 to Exchange Rule 5.33 states that, "[s]pecialists may only redeem and create WEBS on the same terms and conditions as any other investor and only at the net asset value ("NAV"). Proposed commentary .03 to Exchange Rule 5.33 states that:

[n]othing in rule 5.33(a) should be construed to restrict a Specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.¹⁵ The Commission believes that the Exchange's proposal to adopt new rules to accommodate the trading of Units, whether by Exchange listing or pursuant to unlisted trading privileges, will establish a framework to facilitate the trading of new products such as WEBS. The Commission also believes that the Exchange's proposal to trade WEBS pursuant to unlisted trading privileges will provide investors with a convenient way of participating in foreign securities markets, and could benefit investors through increased competition between the market centers trading the WEBS product. Moreover, the Commission believes that the Exchange's WEBS proposal would provide investors with increased flexibility in satisfying their investment needs by allowing them to buy and sell, at negotiated prices throughout the trading day, securities that replicate the performance of several stock portfolios.¹⁶ Accordingly, as discussed below, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act in that it facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.¹⁷

The Commission notes that WEBS should provide investors with several advantages compared to shares of standard, open-end management investment companies (i.e., mutual funds). Specifically, investors will be able to trade WEBS continuously throughout the day in secondary markets at negotiated prices.¹⁸ In contrast, Investment Company Act Rule 22c-1¹⁹ requires investors to purchase

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ Unlike typical open-end investment companies, where investors have the right to redeem their shares on a per share basis, investors in WEBS can redeem them in creation unit size aggregations only.

¹⁷ In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ The Commission believes that WEBS will not trade at a material discount or premium in relation to their net asset value, because of potential arbitrage opportunities. The potential for arbitrage should keep the market price of WEBS comparable to their net asset values; therefore, arbitrage activity likely will not be significant.

¹⁹ Investment Company Act Rule 22c-1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem,

and redeem shares issued by an open-end management investment company based upon the NAV of the securities held by such company. The ability to trade WEBS throughout the day should allow investors to respond quickly to market changes and provide expanded opportunities to engage in hedging strategies. In addition, the cost of WEBS should make them affordable and attractive to individual retail investors who wish to purchase a single security that replicates the performance of a portfolio of foreign stocks.²⁰

Although the market price of each WEBS series is derived from the value of the securities and cash held in the Fund, WEBS are not leveraged instruments. Rather, WEBS essentially are equity securities that represent an interest in a portfolio of stocks designed to track a specific MSCI Index. While the Commission believes that it is appropriate to regulate WEBS like other equity securities, the unique nature of WEBS raises certain trading, disclosure, and surveillance issues. The remainder of this order addresses these issues, although they are discussed in greater detail in the Amex WEBS Approval Order, where the Commission initially approved WEBS for trading as a new product.²¹

A. Trading of WEBS on the Exchange

Before an exchange begins to trade a security pursuant to unlisted trading privileges, Rule 12f-5 of the Act requires the exchange to have in place rules providing for transactions in such security.²² The Commission finds that the Exchange has proposed adequate rules and procedures to govern the trading of WEBS on the Exchange. Specifically, WEBS will be deemed

or resell. See 17 CFR 270.22c-1. The net asset value of an open-end management investment company generally is computed once daily Monday to Friday as designated by the investment company's board of directors. The Commission granted WEBS an exemption from this provision to allow them to trade in the secondary market at negotiated prices. See Amex WEBS Approval Order, *infra* note 21.

²⁰ As of the close of trading on October 1, 1999, the Spain Index Series WEBS, which was valued at \$25.375, was the highest priced of the seventeen listed WEBS series. The least expensive WEBS series was the Malaysia Index Series, value at \$4.9375.

²¹ See Securities Exchange Act Release No. 36947 (Mar. 8, 1996), 61 FR 10606 (Mar. 14, 1996) ("Amex WEBS Approval Order"). The Commission hereby incorporates by reference the discussion and rationale for approving WEBS as stated in the Amex WEBS Approval Order.

²² Rule 12f-5 states that, "[a] national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges." 17 CFR 240.12f-5.

equity securities and will be subject to the Exchange's existing general rules that govern the trading of equity securities.²³ In addition, proposed Exchange Rules 3.2(k), "Investment Company Units," and 3.5(h), "Investment Company Units: Continued Listing Criteria," which contain specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of WEBS.²⁴ These provisions should help to ensure that a minimum level of liquidity exists in each WEBS series to facilitate the maintenance of fair and orderly markets. The delisting criteria will allow the Exchange to consider the suspension of trading and the delisting of a series of Units (including WEBS), if an event were to occur that made further dealings in such securities inadvisable. This provision will give the Exchange the requisite flexibility to suspend or delist trading in WEBS if circumstances warrant. Accordingly, the Commission believes that the Exchange's rules in general, and proposed Exchange Rules 3.2(k) and 3.5(h), in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.²⁵

B. Disclosure of Investors and Exchange Members

The Commission believes that the Exchange's proposal provides for adequate disclosure to investors relating to the terms, characteristics, and risks of trading WEBS. All investors purchasing WEBS on the Exchange will receive a prospectus regarding the specific WEBS product. Because the WEBS proposed to be traded on the Exchange will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply to both the initial purchasers and to investors purchasing such WEBS in the secondary market on the Exchange. The prospectus will address the special characteristics of WEBS, including a statement regarding their redeemability and method of

creation, and specify that WEBS are not individually redeemable.

The Exchange also drafted an information circular that will be distributed to all Exchange members before trading of WEBS begins on the Exchange. The Commission has reviewed this draft information circular and believes it adequately explains the unique characteristics and risks of WEBS. The circular also identifies Exchange member responsibilities. For example, before an Exchange member undertakes to recommend a transaction in WEBS, the member should make a determination that such WEBS transaction is suitable for its customer. The circular also addresses members' responsibility to deliver a prospectus to investors purchasing WEBS, and highlights that WEBS are redeemable only in Creation Unit size aggregations.²⁶ The Commission notes that the Exchange's draft information circular is very similar to the WEBS circulars prepared by the Amex and CHX that were previously reviewed by the Commission.

C. Dissemination of WEBS Portfolio Information

The Commission believes that the dissemination of the Values for the seventeen WEBS series will provide investors with timely and useful information concerning the value of WEBS, on a per WEBS basis. The Commission notes that this information will be disseminated through the facilities of the CTA and will closely approximate the value, per WEBS share, of the portfolio of securities for each WEBS series. The Values will be disseminated every 15 seconds during the Exchange's regular trading hours, and will be available to all investors, irrespective of the exchange market on which a transaction is executed. Also, because each Value is expected to closely track the applicable WEBS series, the Commission believes the Values will provide investors with

adequate information to generally determine the intra-day value of a given WEBS series. The Commission expects the Exchange to monitor the disseminated Values and, if the Exchange determines that a Value does not closely track the applicable WEBS series, arrange to disseminate an adequate alternative.

D. Surveillance of WEBS Trading

The Commission notes that the Exchange submitted confidential surveillance procedures regarding the trading of WEBS on its equity floor. The Commission believes that the surveillance procedures adequately address concerns associated with the trading of WEBS, including concerns attendant to the purchase and redemption of Creation Units. Specifically, the Commission believes that the surveillance procedures should help the Exchange to monitor specialists purchasing and redeeming Creation Units, and ensure compliance with Exchange Rules 5.29(f), "Specialist Responsibility,"²⁷ and 5.33(a), "Specialist Trading."

The Commission believes that adequate safeguards are in place to prevent the abuse of inside information relating to the composition of the MSCI Indices. In the Amex WEBS Approval Order, the Commission discussed abuse of information concerns that arise when a broker-dealer is involved in the development and maintenance of a stock index underlying a derivative product. The Commission believes that procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI Indices have been adopted and should help to address concerns raised by Morgan Stanley's role in maintaining the MSCI Indices.

E. Specialist Activities

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the security from the issuer, as appropriate, to facilitate the maintenance of a fair and orderly market in that security. The Commission generally believes that such market activities should enhance liquidity in the security and facilitate a specialist's market making responsibilities. In addition, because a WEBS specialist will be required to purchase and redeem WEBS only on the

²³ Such general rules include, for example, margin and net capital rules, the short sale rule, trading halt provisions, customer suitability requirements, trading hours, and minimum trading increments.

²⁴ The Commission notes that the Exchange's rules for listing and delisting Units are substantially similar to companion rules adopted by the Amex and CHX.

²⁵ The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of WEBS on the Exchange pursuant to unlisted trading privileges, making WEBS more broadly available to the investing public.

²⁶ The Exchange confirmed with the Commission that PCX members may rely on certain exemptive and no-action relief regarding WEBS that the Commission previously provided to the Amex. The Commission gave to Amex exemptive relief from Rules 10a-1, 10b-6, 10b-7, 10b-10, 10b-13, and 10b-17 under the Act; and no-action relief for Section 11(d)(1) of the Act and Rules 11d1-2, 15c1-5 and 15c1-6 thereunder. To the extent that Regulation M supersedes Rules 10b-6 and 10b-7, Exchange members may continue to rely upon the relief regarding those two rules. See Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, Exchange, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated May 11, 1999; and letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to Donald R. Crawshaw, Sullivan & Cromwell, dated April 17, 1996.

²⁷ Exchange Rule 5.29(f) specifies that, "a Specialist is to engage in a course of dealings for his own account to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange."

same terms and conditions as any other investor (and only at the NAV), and Creation Unit transactions occur through the Fund Distributor, the Commission believes that the potential for abuse is minimized. Furthermore, the Exchange's surveillance procedures should help the Exchange to monitor specialist trading activity and determine whether a specialist's transaction was effected to maintain fair and orderly markets, or for some improper or speculative purpose. Finally, the Commission notes that its approval of this aspect of the Exchange's proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.²⁸

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides additional information responsive to Commission staff concerns and proposes several revisions that strengthen the Exchange's proposed rule change. First, Amendment No. 1 provides confidential surveillance procedures that describe how the Exchange will monitor trading in WEBS. The Commission believes that the procedures are well designed and will help the Exchange detect trading abuses and safeguard the integrity of WEBS trading on the Exchange. Amendment No. 1 also proposes Commentaries .02 and .03 to Exchange Rule 5.33(a), which clarify that: (i) Exchange specialists may redeem and create WEBS only on the same terms and conditions as any other investor, and only at the NAV; and (ii) Exchange specialists registered in an Investment Company security may purchase and redeem the listed Investment Company security, or securities that can be subdivided or converted into the listed Investment Company security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security. These provisions establish appropriate limitations on the trading activities of Exchange specialists, but also provide the flexibility necessary to maintain fair and orderly markets.

Amendment No. 1 also clarifies several aspects of the proposal, including: (i) the Exchange's intent to

trade WEBS pursuant to unlisted trading privileges; (ii) treatment of the Malaysian Index Series WEBS; (iii) review of specialist trading activity in WEBS; and (iv) the dissemination of NAVs. Lastly, Amendment No. 1 confirms that Exchange members may rely on certain exemptive and no-action relief regarding WEBS, which the Commission previously provided to the Amex.²⁹

Based on the above, the Commission finds that good cause exists, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,³⁰ to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendments No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, 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 persons, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-98-29 and should be submitted by November 5, 1999.

V. Conclusion

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-PCX-98-29), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,
Deputy Secretary.

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²⁸ See *supra* note 5 for a more detailed description of Amendment No. 1.

²⁹ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41991; File No. SR-Phlx-99-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Numbers 1 and 3 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Allocation, Evaluation and Securities Committee Provisions

October 7, 1999.

Pursuant to Section 19(b)(1) of Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 1, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change.³ On October 1, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change⁴ and on October 5, 1999, the Exchange submitted Amendment No. 2.⁵ The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to amend Exchange Rule 511(b), Specialist Performance Evaluation, to reflect the view of the Allocation, Evaluation and Securities Committee ("Committee") that voluntary delisting of options book by option specialists, done in the best interest of the Exchange and to encourage a better use of Exchange and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange submitted its proposal on September 9, 1999. However, because of the substantive nature of Amendment No. 1, the Commission deems the proposal effective on October 1, 1999, the date of filing of Amendment No. 1.

⁴ In Amendment No. 1, the Exchange amended its proposed rule language to clarify that only voluntary delisting of options books done in the best interest of the Exchange will not be viewed negatively by the Committee. See Letter from Richard S. Rudolph, Counsel, Phlx, to Terry Evans, Attorney, Division of Market Regulation ("Division"), Commission, dated September 30, 1999 ("Amendment No. 1").

⁵ In Amendment No. 2, the Exchange made a minor technical change to its proposed rule language to conform such language to the rule as currently drafted. See Letter from Richard S. Rudolph, Counsel, Phlx, to Terry Evans, Attorney, Division, Commission, dated October 4, 1999 ("Amendment No. 2").

²⁸ The Commission notes that with respect to WEBS, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's Statement of Additional Information that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.