

documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,
Clearance Officer,

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25409; 812-12296]

Nuveen Exchange-Traded Index Trust, et al.; Notice of Application

February 5, 2002.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) an open-end management investment company, whose portfolios will consist of the component securities of certain domestic or foreign equity securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC ("AMEX") or other national securities exchange; (c) affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and (d) under certain circumstances, certain portfolios that consist of the component securities of foreign equity securities indices to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption.

APPLICANTS: Nuveen Exchange-Traded Index Trust ("Trust"), Nuveen Advisory Corp. ("Advisor"), and Nuveen Investments ("Distributor").

FILING DATES: The application was filed on October 16, 2000, and amended on

April 24, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 1, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, at 202-942-0553, or Mary Kay Frech, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust with multiple series ("Index Funds," which term includes Future Index Funds, as defined below). The Advisor, a wholly owned subsidiary of the Distributor, is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser for the initial Index Funds (the "Initial Index Funds"). The Advisor may in the future enter into subadvisory agreements with one or more subadvisors ("Sub-Advisors") with respect to particular Index Funds. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), will serve as the principal underwriter for each Index Fund and will distribute Creation Units (defined below) of Index Fund shares ("Shares") on an agency basis.

2. Each Index Fund will invest in a portfolio of equity securities ("Portfolio Securities") generally consisting of the component securities of a specified domestic or foreign equity securities index (each, an "Underlying Index" and together, the "Underlying Indices").¹ There are three Initial Index Funds, one based on a domestic equity securities index (the "Initial Domestic Fund")² and two based on foreign equity securities indices (the "Initial Foreign Funds").³ In the future, the applicants may offer additional Index Funds based on other domestic or foreign equity securities indices ("Future Domestic Funds" and "Future Foreign Funds," respectively, and collectively "Future Index Funds"). Any Future Index Fund will (a) be advised by the Advisor or an entity controlled by or under common control with the Advisor and (b) comply with the terms and conditions of the order. Future Domestic Funds together with the Initial Domestic Fund are referred to as "Domestic Index Funds," and Future Foreign Funds together with the Initial Foreign Funds are referred to as "Foreign Index Funds." No entity that creates, compiles, sponsors or maintains an Underlying Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Advisor, any Sub-Advisor, the Distributor, or a promoter of an Index Fund.

3. The investment objective of each Index Fund will be to provide investment results that generally correspond, before fees and expenses, to the price and yield performance of the relevant Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day. Each Index Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy. An Index Fund using a replication strategy generally will hold most of the component securities of the Underlying Index in the same approximate proportions as the Underlying Index, but may not hold all of the securities that comprise the Underlying Index in

¹ At least 90% of each Index Fund's assets will be invested in the component securities of its Underlying Index. An Index Fund may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as certain securities not included in the Underlying Index but which the Advisor believes will help the Index Fund track the Underlying Index.

² America's Fast Growing Companies™ Index (the "AFGC Index") is the Underlying Index for the Initial Domestic Fund.

³ The Salomon Smith Barney ("SSB") Panda Index and the SSB Nippon Index are the Underlying Indices for the Initial Foreign Funds.

certain instances. This may be the case when, for example, a potential component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index. An Index Fund using a representative sampling strategy seeks to hold a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.⁴ Applicants anticipate that an Index Fund that utilizes a representative sampling strategy will not track the price and yield performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Index Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

4. Shares of the Initial Index Funds will be sold in aggregations of 50,000 Shares, and Shares of Future Index Funds will be sold in aggregations of either 25,000 or 50,000 Shares (such aggregations, "Creation Units"), as specified in the relevant prospectus. The price of a Creation Unit will range from \$1,000,000 to \$12,500,000. Creation Units may be purchased only by or through a party that has entered into an agreement with the Distributor regarding creations and redemptions of Creation Units (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (transactions effected through such a broker-dealer are referred to as effected through the "Fund Shares Clearing Process"), or (b) a participant in the Depository Trust Company ("DTC") system. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit from an Index Fund will have to transfer to the Index Fund a "Portfolio Deposit" consisting of: (a) A portfolio of securities that has been selected by the Advisor or Sub-Advisor to correspond to the price and yield performance of

the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment to equalize any difference between the total aggregate market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit of the Index Fund (the "Balancing Amount").⁵ An investor purchasing a Creation Unit from an Index Fund will be charged a fee ("Transaction Fee") to defray transactions expenses and prevent dilution of the interests of the remaining shareholders resulting from the Index Fund incurring costs in connection with the purchase of the Creation Unit(s).⁶ Each Index Fund will disclose in its prospectus the maximum Transaction Fee charged by the Index Fund. Each Index Fund will also disclose the method of calculating the Transaction Fee in its prospectus or statement of additional information ("SAI").

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting orders to each Index Fund. The Distributor will issue, and maintain records of, confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trust (to implement the delivery of Creation Units). The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from an Index Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Initial Index Funds will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. Future Index Funds will be

⁵ On each business day, prior to the opening of trading on the AMEX, the Advisor or Sub-Advisor will make available a list of the names and the required number of shares of each Deposit Security required for the Portfolio Deposit for each Index Fund. That Portfolio Deposit will apply to all purchases of Creation Units until a new Portfolio Deposit for an Index Fund is announced. Each Index Fund reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in the quantity replaced for a Portfolio Deposit, ineligible for transfer through the Fund Shares Clearing Process, ineligible for trading by an Authorized Participant or by the investor on whose behalf the Authorized Participant is acting, or in the case of certain Foreign Index Funds, not able to be delivered in-kind. The AMEX or other Exchange (defined below) will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing the sum of the Balancing Amount and the current value of the Deposit Securities on a per Share basis.

⁶ When an Index Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

listed on the AMEX or other U.S. national securities exchange, as defined in section 2(a)(26) of the Act (each, including AMEX, an "Exchange"). One or more member firms of the Exchange ("Specialists") will maintain a market on the Exchange for the Shares trading there. The price of Shares traded on an Exchange will be based on a current bid/offer market. Each Share is expected to have a market value of between \$40 and \$250. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). In providing for a fair and orderly secondary market for Shares on the Exchange, the Specialist also may purchase Creation Units. Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Units to take advantage of discrepancies between the Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity, which is a function of Creation Units being purchased and redeemed primarily in kind, will provide a pricing "discipline" that will result in a close correspondence between the price at which the Shares trade and their NAV. In other words, applicants do not expect the Shares to trade at a significant premium or discount to their NAV. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.⁷

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Index Fund. To redeem, investors will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (a) the Portfolio Securities designated to be delivered for Creation Unit redemptions on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ from the Balancing Amount if the Redemption Securities are not identical

⁷ Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial ownership of Shares.

⁴ The stocks selected for inclusion in an Index Fund by the Advisor will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the relevant Underlying Index taken in its entirety.

to the Deposit Securities on a given day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as when the investor is constrained from effecting transactions in the Redemption Security by regulation or policy or when, as may be the case with certain Foreign Index Funds, it is not possible to effect transactions in kind in an applicable jurisdiction.⁸

9. A redeeming investor will pay a Transaction Fee to offset transaction costs, whether the redemption proceeds are in kind or cash. When an investor redeems for cash rather than in kind, the investor may pay a higher Transaction Fee. Such Transaction Fee will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.

10. Because each Index Fund will principally redeem Creation Units in kind, an Index Fund will not have to maintain significant cash reserves for redemptions. This will allow the assets of each Index Fund to be committed as fully as possible to tracking its Underlying Index. Accordingly, applicants state that each Index Fund will be able to track its Underlying Index more closely than certain other investment products that must allocate a greater portion of their assets to cash redemptions.

11. Applicants state that neither the Trust nor any Index Fund will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Rather, the designation of the Trust and the Index Funds in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund" and "trust" without reference to an "open-end fund" or "mutual fund," except to contrast the Trust and the Index Funds with a conventional open-end management investment company. Any marketing materials that describe the purchase or sale of Creation Units, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may tender Shares for redemption to the Index Fund in Creation Units only. The same type of disclosure will be provided in each Index Fund's prospectus, SAI and all reports to shareholders.⁹ The

⁸ Applicants note that certain holders of Shares of a Foreign Index Fund may be subject to unfavorable tax treatment if they are entitled to receive in-kind redemption proceeds. The Trust may adopt a policy with respect to such Foreign Index Funds that such holders of Shares may redeem Creation Units solely for cash.

⁹ Applicants state that persons purchasing Creation Units will be cautioned in an Index Fund's prospectus or SAI that some activities on their part

Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act. Applicants request relief for the Initial Index Funds as well as Future Index Funds. Any Future Index Fund relying on any order granted pursuant to this application will comply with the terms and conditions stated in the application.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit

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 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the purchase of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. An Index Fund's prospectus or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. An Index Fund's prospectus or SAI also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Creation Units from each Index Fund and redeem Creation Units through each Index Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately NAV.

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involve Index Fund assets, and (b) to the extent different prices exist

during a given trading day, or from day to day, such variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

6. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Redemption Securities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for the Foreign Index Funds in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that such Foreign Index Funds may pay redemption proceeds up to 12 calendar days after the tender of Shares for redemption.¹⁰ At all other times and except as disclosed in the prospectus or SAI for a Foreign Index Fund, applicants expect that the Foreign Index Funds will be able to deliver redemption proceeds within seven days.¹¹ With respect to Future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described herein exist.

7. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Index Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Index Funds. Applicants believe that the Trust will be able to comply with the delivery requirements of section 22(e), except where the

holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

8. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems section 22(e) was designed to prevent. Applicants state that the local holidays relevant to each Foreign Index Fund, as in effect in a given year, will be listed in the relevant Foreign Index Fund's prospectus or SAI or both. Applicants further state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and state the maximum number of days needed to deliver the proceeds for each Foreign Index Fund.

9. Section 17(a) of the Act makes it unlawful, except under certain circumstances, for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that because the definition of "affiliated person" includes any person owning 5% or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Index Fund so long as fewer than twenty Creation Units are in existence, and any purchaser that owns 25% or more of an Index Funds' outstanding Shares will be affiliated with the Index Fund. Applicants assert that, from time to time, one or more holders of Shares, including the Specialist, may accumulate more than 5% or more than 25% of an Index Fund's outstanding Shares. Applicants state that section 17(a) may prohibit such affiliated persons of an Index Fund (and affiliated persons of affiliated persons that are not otherwise affiliated with the Trust or the Index Fund) from purchasing or redeeming Creation Units in kind. Applicants request an exemption from

section 17(a) under sections 6(c) and 17(b) to permit these affiliated persons of the Index Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the Index Fund) to effect such transactions in Creation Units.

10. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Units. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons, and the affiliated persons of the affiliated persons, described above, of an Index Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Index Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register the Shares of a Future Index Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Index Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Index Fund will be listed on a national securities exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Index Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Index Funds and that the acquisition of Shares by investment companies is subject to

¹⁰ Specifically, applicants request that the (i) Nuveen Panda Index Fund be permitted to make redemption payments up to 11 calendar days after the tender of a Creation Unit for redemption, and (ii) Nuveen Japan Index Fund be permitted to make redemption payments up to 12 calendar days after the tender of a Creation Unit for redemption.

¹¹ Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. See *In the Matter of WEBS Index Series, Inc., et al.*, Investment Company Act Release No. 23860, 1999 WL 3621843 (June 7, 1999). Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a national securities exchange.

4. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

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

6. The prospectus and annual report for each Index Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the Index Fund's prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Underlying Index.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45384; File No. SR-OPRA-2001-03]

Options Price Reporting Authority; Order Approving Amendment to OPRA Plan to Exclude Foreign Currency Options from the Calculation of Capacity Allocation Provided for in the OPRA Plan

February 1, 2002.

I. Introduction

On December 10, 2001, Options Price Reporting Authority ("OPRA"),¹ filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),² an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would exclude foreign currency options ("FCOs") from the calculation of capacity allocation provided for in the OPRA Plan.

The proposed amendment was published for comment in the **Federal Register** on January 4, 2002.³ No comments were received on the proposal. In this order, the Commission is approving the proposed amendment.

II. Description of the Proposal

OPRA proposes to revise certain provisions of Section III, "Definitions" and Section V(d), "Quarterly Calculation of Capacity Allocation" in order to exclude FCOs from the calculation of system capacity allocation that is provided for in the OPRA Plan and make available exclusively for the processing and dissemination of FCO market data a fixed amount of system capacity as determined by OPRA from time to time. The proposed amendment

¹ OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc., is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange, Inc. in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

² 17 CFR 240.11Aa3-2.

³ Securities Exchange Act Release No. 45207 (December 28, 2001), 67 FR 619.

provides that the capacity available for FCO market data will be capable of handling at least 350 messages per second ("mps"), the amount currently assigned by OPRA to FCO market data. OPRA represents that such capacity is sufficient to meet the anticipated needs of the FCO market. OPRA represents that the proposed amendment would make no substantive change to the provisions of the OPRA Plan.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.⁴ Specifically, the Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act⁵ and Rule 11Aa3-2⁶ thereunder in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that the capacity available for FCO market data should be capable of handling at least 350 mps, which is the amount currently assigned by OPRA to FCO market data. OPRA has represented that such capacity is sufficient to meet the anticipated needs of the FCO market. The Commission also notes that OPRA has been advised by its Processor that exclusive of capacity set aside for the FCO market, the remaining capacity of the OPRA System is capable of handling at least 24,000 mps to process and disseminate market data for stock and index options. OPRA represents that this amount of system capacity is more than enough to fulfill OPRA's needs until the next planned increase in total capacity. Based on OPRA's representations, the Commission believes that it is reasonable for OPRA to exclude FCOs from the calculation of system capacity allocation and to separately determine a fixed amount of capacity for FCO market data. Accordingly, the Commission finds that the proposal is consistent with the Act.⁷

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3-2 under the Act,⁸ that the

⁴ In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78k-1.

⁶ 17 CFR 240.11A3-2.

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 240.11Aa3-2.