

declaration, as filed or as amended, may be granted and/or permitted to become effective.

Entergy Mississippi, Inc. (70-9757)

Entergy Mississippi, Inc. ("EMI"), 308 East Pearl Street, Jackson, Mississippi, an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 42, 44, 62 and 65 under the Act.

By order dated December 26, 2000 (HCAR No. 27317), EMI was authorized, among other things, from time to time through December 31, 2003, to issue and sell up to (i) \$540 million of EMI's first mortgage bonds ("Bonds") and/or EMI's debentures ("Debentures"); (ii) \$50 million of preferred securities of a subsidiary of EMI ("Entity Interests") and/or EMI's preferred stock ("Preferred Stock"); (iii) \$46 million of tax-exempt bonds ("Tax-Exempt Bonds") to be issued by the appropriate governmental authority, including the pledge of bonds up to \$52 million as security; and (iv) \$100 million of municipal securities ("Municipal Securities") issued by the appropriate municipal entity.

Fees, commissions and expenses of the underwriters to be incurred in connection with the Bonds, Debentures, Preferred Stock and Tax-Exempt Bonds were estimated not to exceed 2% of the principal amount to be sold, and in the case of Entity Interests and Debentures issued under a subordinated debenture indenture, 3.25% of the principal amount to be sold.

EMI states that current market conditions require an increase above the 2% of principal amount of underwriters' fees, commissions and expenses to effect sales into the retail securities markets. EMI now requests authority for fees, commissions and expenses of the underwriters to be incurred in connection with the issuance and sale of Bonds, Debentures, Debentures issued under a subordinated debenture indenture, Preferred Stock, Entity Interests, Tax-Exempt Bonds and Municipal Securities not to exceed the lesser of 3.25% of the principal amount, respectively, to be sold or those generally paid at the time of pricing for sales of first mortgage bonds, debentures, debentures issued under a subordinated debenture indenture, preferred stock, subsidiary interests, tax-exempt bonds or municipal securities, respectively, having the same maturity, issued by companies of comparable

credit quality and having similar terms, conditions and features.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-22913 Filed 9-9-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25725; 812-12843]

ETF Advisors Trust, et al.; Notice of Application

September 3, 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 24(d) 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 series will be based on certain fixed-income securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; (c) dealers to sell shares of the series of the Trust to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

APPLICANTS: ETF Advisors Trust ("Trust"), ETF Advisors, LP ("Advisor"), and ALPS Distributors, Inc. ("Distributor").

FILING DATES: The application was filed on July 2, 2002, and amended on August 22, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief 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 September 26, 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: Trust and Advisor, 153 East 53rd Street, 49th Floor, New York, New York 10022; Distributor, 370 17th Street, Suite 3100, Denver, Colorado 80202.

FOR FURTHER INFORMATION, CONTACT: Laura J. Riegel, Senior Counsel, at 202-942-0567, or Michael W. Mundt, Senior Special Counsel, 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 Delaware business trust. The Trust intends to offer four series (each, an "Index Fund"). The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser for the 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.

2. Each Index Fund will invest in a portfolio of securities ("Portfolio Securities") to provide investment results that seek to match, before fees and expenses, the total return of an underlying fixed income security index (each, an "Underlying Index" and together, the "Underlying Indices").¹ No

¹ An Index Fund will invest at least 90% of its total assets in investment grade debt securities issued or guaranteed by the U.S. Treasury ("Treasury Securities"), or by an agency or instrumentality of the U.S. government, or by a government-sponsored entity such as the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation and Fannie Mae, formerly the Federal National Mortgage Corporation. Each Index Fund will invest at least 80% of its total assets in Treasury Securities. An Index Fund may also invest up to 10% of its total assets in repurchase agreements,

entity that creates, compiles, sponsors or maintains an Underlying Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of any of the Trust, an investment adviser to any Index Fund, the Distributor, or a promoter of an Index Fund.

3. The Advisor will seek to achieve each Index Fund's investment objective by constructing the portfolio of an Index Fund to provide a duration and cash flow profile similar to that of the Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the American Stock Exchange, LLC ("AMEX"). Applicants expect that each Index Fund will have an annual tracking error relative to the performance of its respective Underlying Index of less than 1 percent.

4. Shares of the Index Funds ("FITRs") will be issued in aggregations of 50,000 FITRs (such aggregations, "Creation Unit Aggregations"), as specified in the relevant prospectus (the "Prospectus"). The price of a Creation Unit Aggregation will range from \$2,500,000 to \$10,000,000. Creation Unit Aggregations may be purchased only by or through a party that has entered into an agreement with the administrator of an Index Fund and the Distributor regarding creations and redemptions of Creation Unit Aggregations (an "Authorized Participant"). An Authorized Participant must be a participant in The Depository Trust Company ("DTC"). Creation Unit Aggregations generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Unit Aggregations on a cash-only basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit Aggregation 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 to closely match the total return of the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment to equalize any difference between the total aggregate market value

futures contracts, options and other derivative instruments only in furtherance of the objective of seeking to closely match the total return, before fees and expenses, of that Index Fund's Underlying Index.

The Underlying Indices for the Index Funds are the Ryan 1 Year Adjusted Treasury Index, Ryan 2 Year Treasury Index, Ryan 5 Year Treasury Index and Ryan 10 Year Treasury Index. The Underlying Indices consist of the most recently auctioned Treasury Securities for various maturities.

per Creation Unit Aggregation of the Deposit Securities and the net asset value ("NAV") per Creation Unit Aggregation of the Index Fund (the "Balancing Amount").² An investor purchasing a Creation Unit Aggregation from an Index Fund will be charged a fee ("Transaction Fee") to defray transaction 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 Aggregation.³ 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 statement of additional information ("SAI").

5. Orders to purchase Creation Unit Aggregations 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 Unit Aggregations and delivery instructions to the relevant Index Fund (to implement the delivery of Creation Unit Aggregations). The Distributor also will be responsible for delivering Prospectuses to purchasers of Creation Unit Aggregations. 6. Persons purchasing Creation Unit Aggregations from an Index Fund may hold the FITRs or sell some or all of them in the secondary market. FITRs of the Index Funds will be listed on the AMEX or on another national securities exchange as defined in section 2(a)(26) of the Act (each, including AMEX, an "Exchange") and traded in the secondary market in the same manner as equity securities. One or more member firms of the AMEX ("Specialists") will maintain a market on the AMEX for the FITRs. The price of FITRs traded on an Exchange will be

² On each business day, prior to the opening of trading on the Exchange (as defined below), the custodian for each Index Fund 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 Unit Aggregations 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. The AMEX 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 FITR basis.

³ 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.

based on a current bid/offer market. Each FITR is expected to have a market value of between \$50 and \$200. Transactions involving the sale of FITRs in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). In providing for a fair and orderly secondary market for FITRs on the Exchange, the Specialist also may purchase Creation Unit Aggregations. Applicants expect that secondary market purchasers of FITRs will include both institutional and retail investors.⁴ Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Unit Aggregations to take advantage of discrepancies between the FITRs' market price and the FITRs' underlying NAV. Applicants expect that this arbitrage activity will provide a pricing "discipline" that will result in a close correspondence between the price at which FITRs trade and their NAV. In other words, applicants do not expect the FITRs to trade at a significant premium or discount to their NAV.

8. Applicants will make available a FITRs product description ("Product Description") for distribution in accordance with an AMEX rule requiring AMEX members and member organizations effecting transactions in FITRs to deliver a Product Description to investors purchasing FITRs. Applicants state that any other Exchange that applies for unlisted trading privileges in FITRs will have to adopt similar rules.⁵ The Product Description for an Index Fund will provide a straightforward overview of the Index Fund, including its investment objective and strategies and the material risks and potential rewards of owning FITRs. The Product Description also will provide a clear, brief description of the essential features of the Index Fund's FITRs. The Product Description will clearly indicate that a Prospectus and the Index Fund's SAI may be obtained, without charge, from the Distributor, the investor's broker, or the Trust's website. The Product Description also will provide the website address of the Trust, and of the

⁴ FITRs will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding FITRs. DTC or its participants will maintain records reflecting the beneficial ownership of FITRs.

⁵ Applicants expect that the number of purchases of FITRs in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in FITRs.

Index Provider for the Underlying Index, so that investors who wish to learn more about FITRs and/or the Underlying Index may do so.

9. FITRs will not be individually redeemable. FITRs will only be redeemable in Creation Unit Aggregations through each Index Fund. To redeem, investors will have to accumulate enough FITRs to constitute a Creation Unit Aggregation. An investor redeeming a Creation Unit Aggregation generally will receive (a) the Portfolio Securities designated to be delivered for Creation Unit Aggregation 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 Unit Aggregations, 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 to the Deposit Securities on a given day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances. 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.

10. 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 compare and contrast the Trust and the Index Funds with traditional mutual funds. Any marketing materials that describe the purchase or sale of Creation Unit Aggregations, or refer to redeemability, will prominently disclose that FITRs are not individually redeemable and that owners of FITRs may tender FITRs for redemption to the Index Fund in Creation Unit Aggregations only. The same type of disclosure will be provided in each Index Fund's Prospectus, SAI and all reports to shareholders. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of FITRs.

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 24(d) 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.

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.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management company which 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 a proportionate share of the issuer's current net assets, or the cash equivalent. Because FITRs will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Trust to register as an open-end management investment company and issue FITRs that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Creation Unit Aggregations from each Index Fund and redeem Creation Unit Aggregations through each Index Fund. Applicants believe that because the market price of Creation Unit Aggregations will be disciplined by arbitrage opportunities, investors generally should be able to sell FITRs in the secondary market at approximately NAV.

Section 22(d) and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that 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 FITRs 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 FITRs 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 FITRs. 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) ensure 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.

6. Applicants believe that none of these purposes will be thwarted by permitting FITRs to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in FITRs would not cause dilution for owners of FITRs 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 FITRs 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 FITRs and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling FITRs to rely on the

prospectus delivery exemption provided by section 4(3) of the Securities Act.⁶

8. Applicants state that FITRs will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that FITRs, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because FITRs will be exchange-listed, prospective investors will have access to several types of market information about FITRs. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day. The previous day's closing price and volume information for FITRs also will be published daily in the financial sections of many newspapers. In addition, the Trust's website will also include for each Index Fund, the previous business day's NAV and the bid price at the time of calculation of such NAV (the "Bid Price") and data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.⁷

⁶ Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Unit Aggregations or those involving an underwriter. Applicants state that persons purchasing Creation Unit Aggregations will be cautioned in an Index Fund's Prospectus 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. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Unit Aggregations after placing an order with the Distributor, breaks them down into the constituent FITRs, and sells FITRs directly to its customers; or if it chooses to couple the purchase of a supply of new FITRs with an active selling effort involving solicitation of secondary market demand for FITRs. An Index Fund's Prospectus 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 also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with FITRs 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.

⁷ The Bid Price per FITR of an Index Fund is determined using the highest bid price on the

10. Investors also will receive a Product Description describing the Index Fund and its FITRs. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about FITRs that is tailored to meet the needs of investors purchasing FITRs in the secondary market.

Sections 17(a)(1) and (a)(2) of the Act

11. 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 more than 25% 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 Aggregation will be affiliated with the Index Fund so long as twenty or fewer Creation Unit Aggregations are in existence, and any purchaser that owns more than 25% of an Index Fund's outstanding FITRs will be affiliated with the Index Fund. Applicants assert that, from time to time, one or more holders of FITRs, including the Specialist, may accumulate 5% or more or more than 25% of an Index Fund's outstanding FITRs. 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 Unit Aggregations 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 Unit Aggregations.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed

Exchange on which the FITRs of such Index Fund are listed for trading.

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 policy of each registered investment company concerned 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 Unit Aggregations. 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 FITRs. 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 a future portfolio of the Trust, by means of filing a post-effective amendment to the Trust's registration statement or by another means, unless Applicants have requested and received with respect to such future portfolio, either (a) exemptive relief from the Commission or (b) a no-action letter from the Division of Investment Management of the Commission.

2. Each Index Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, FITRs are issued by each Index Fund and that the acquisition of FITRs by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the FITRs will be listed on an 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 FITRs are not individually redeemable shares and will disclose that the owners of FITRs may

acquire those FITRs from the Index Fund and tender those FITRs for redemption to the Index Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that FITRs are not individually redeemable and that owners of FITRs may acquire those FITRs from the Index Fund and tender those FITRs for redemption to the Index Fund in Creation Unit Aggregations only.

5. Before an Index Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in FITRs to deliver a Product Description to purchasers of FITRs.

6. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per FITR basis, for each Index Fund: (a) The prior business day's NAV and Bid Price, and a calculation of the premium or discount of such Bid Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Index Fund will state that the website of the Trust has information about the premiums and discounts at which the Index Fund's FITRs have traded.

7. The Prospectus and the annual report for each Index Fund will also include: (a) The information listed in condition 6(b), (i) in the case of the 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 FITR 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 Bid 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.

[FR Doc. 02-22888 Filed 9-9-02; 8:45 am]
BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46451; File No. SR-Amex-2002-46]

Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change Relating to the Amex Listing Agreement

September 3, 2002.

On May 29, 2002, the American Stock Exchange LLC ("Amex or Exchange") 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 modify the Amex Listing Agreement for issuers.

The proposed rule change was published for comment in the **Federal Register** on July 23, 2002.³ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-Amex-2002-46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-22891 Filed 9-9-02; 8:45 am]
BILLING CODE 8010-01-P

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ See Securities Exchange Act Release No. 46218 (July 17, 2002), 67 FR 48231 (July 23, 2002).
⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.
⁵ 15 U.S.C. 78f.
⁶ 15 U.S.C. 78s(b)(2).
⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46455; File No. SR-CBOE-2002-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Establishing To Adopt an Access Fee for Non-Customer Orders in the MNXSM, NDX, QQQ, and XEO[®] Options Classes Executed Through the Retail Automatic Execution System

September 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange proposes to adopt an access fee for non-customer orders in the Nasdaq 100[®] Index Tracking Stock ("QQQ"), Nasdaq-100[®] Index ("NDX"), CBOE Mini-NDX Index ("MNXSM"), and European style S&P 100[®] Index ("XEO[®]") option classes executed through its Retail Automatic Execution System ("RAES"). The text of the proposed rule change appears below. New text is in italics.

FEE SCHEDULE AS OF JULY 1, 2002

4. RAES (Retail Automatic Execution System) (1)(4)	Per contract
Assessed to Index Customer Transactions	\$.25
• Dow Jones, Assessed on the First 25 Contracts Only	
Assessed to Non-Customer Transactions in MNX, NDQ, QQQ and XEO	\$.30

* * * * *

(1) Per contract side, including FLEX options. Transaction and Trade Match Fees are applicable to the CBOEdirect system.

* * * * *

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.