

SR-CBOE-2002-27 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46686; File No. SR-NYSE-2002-51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Exchange Traded Funds Based on Dow Jones STOXX 50SM and Dow Jones EURO STOXX 50SM Indexes.

October 18, 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 October 18, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 list and trade, under Section 703.16 of the Listed Company Manual (the "LCM") and the Exchange's Rule 1100 *et seq.*, shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a "Fund" and together, the "Funds"). The Funds are each a separate series of Fresco Index Shares Funds (the "Trust")³ UBS Global Asset Management (US) Inc. ("UBS Global AM"), an indirect wholly owned asset

management subsidiary of UBS AG ("UBS"), acts as the advisor (the "Advisor") to the Funds. UBS Global Asset Management International Ltd. ("UBS Global AM Ltd."), an indirect wholly owned asset management subsidiary of UBS, acts as the sub-advisor to the Funds. STOXX Limited, a joint venture among Deutsche Boerse AG, Dow Jones & Company, Inc., Euronext Paris SA and SWX Swiss Exchange ("STOXX"), provides and services the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes (each an "Index" or "Underlying Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade, under Section 703.16 of the Listed Company Manual (the "LCM") and the Exchange's Rule 1100 *et seq.*, shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a "Fund" and together, the "Funds"). The Funds are each a separate series of Fresco Index Shares Funds (the "Trust").⁴ UBS Global Asset Management (US) Inc. ("UBS Global AM"), an indirect wholly owned asset management subsidiary of UBS AG ("UBS"), acts as the advisor (the "Advisor") to the Funds. UBS Global Asset Management International Ltd. ("UBS Global AM Ltd."), an indirect wholly owned asset management subsidiary of UBS, acts as the sub-advisor to the Funds. STOXX Limited, a joint venture among Deutsche Boerse AG, Dow Jones & Company, Inc.,

Euronext Paris SA and SWX Swiss Exchange ("STOXX"), provides and services the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes (each an "Index" or "Underlying Index"). STOXX Limited is not affiliated with the Trust, the Funds, UBS Global AM or the Exchange.

Indexes⁵

The Dow Jones STOXX 50 Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones STOXX 600SM market sector indexes are a subset of the pan-European Dow Jones STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in Europe.

The Dow Jones EURO STOXX Index represents the performance of the 50 largest companies, across all components of the 18 Dow Jones EURO STOXX 600SM market sector indexes. The Dow Jones EURO STOXX 600SM market sector indexes are a subset of the Dow Jones EURO STOXXSM Total Market Index and contain the 600 largest stocks traded on the major exchanges in the Eurozone.⁶

The Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 Indexes track the large-cap markets of the European and Eurozone regions. Both these Dow Jones STOXX blue-chip indexes are currently in use globally as the basis for investment products, such as derivatives and exchange-traded funds. Their components have a high degree of liquidity and represent the largest companies across all 18 market sectors defined by the Dow Jones Global Classification standard.

Derived from the broader total market indexes for each of the two regions, Europe and the Eurozone, these two blue-chip indexes each represent about 60% of the market capitalization of their underlying benchmarks.

The index universes for each of the Dow Jones STOXX 50 Index and the Dow Jones EURO STOXX 50 Index are defined, respectively, as all components of the 18 Dow Jones STOXX 600 market sector indexes and all components of the 18 Dow Jones EURO STOXX market

⁵ The Exchange attached a detailed description of each of the Underlying Indexes for the Funds as Exhibit 2 to its Form 19b-4. This description includes, but is not limited to, information regarding index description, component selection criteria, country representation and Index maintenance. Descriptions of each Index, including any changes thereto, may be found on the STOXX Web site at <http://www.stoxx.com>.

⁶ The "Eurozone" includes the countries of the European Monetary Union. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N-1A under the Securities Act of 1933 as amended (the "Securities Act") and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333-92106 and 811-21145, respectively).

⁴ The Trust is registered under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust has filed with the Commission a Registration Statement on the Form N-1A under the Securities Act of 1933 as amended (the "Securities Act") and under the Investment Company Act of 1940 relating to the Fund (File Nos. 333-92106 and 811-21145, respectively).

sector indexes. The Dow Jones STOXX 600 market sector indexes contain the 600 largest stocks traded on the major exchanges of 17 European countries. STOXX, Dow Jones STOXX 50, Dow Jones EURO STOXX 50 and Dow Jones STOXX 600 are each service markets of STOXX Limited.

The Dow Jones EURO STOXX market sector indexes represent the Eurozone portion of the Dow Jones STOXX Total Market Index ("TMI"), which in turn covers 95% of the total market capitalization of the stocks traded on the major exchanges of 17 European countries.

For each of the 18 Dow Jones STOXX 600 market sector indexes, the component stocks are ranked by free-float market capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free float market capitalization of the corresponding Dow Jones STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are Dow Jones STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list. Within each of the 18 Dow Jones EURO STOXX market sector indexes, the component stocks are ranked by free-float capitalization. The largest stocks are added to the selection list until the coverage is close to, but still less than, 60% of the free-float market capitalization of the corresponding Dow Jones EURO STOXX TMI market sector index. If the next-ranked stock brings the coverage closer to 60% in absolute terms, then it is also added to the selection list. Any remaining stocks that are current Dow Jones EURO STOXX 50 Index components are added to the selection list. The stocks on the selection list are ranked by free-float market capitalization. In exceptional cases, the STOXX Limited Supervisory Board may make additions and deletions to the selection list.

The 40 largest stocks on the selection list for each index are chosen as components. Any remaining current components of the index ranked between 41 and 60 are added as index components. If the component number is still below 50, then the largest stocks on the selection list are added until the index contains 50 stocks.

The indexes are each weighted by free-float market capitalization. Each

component's weight is capped at 10% of the index's total free-float market capitalization. Each component's weight is capped at 10% of the index's total free-float market capitalization. Weights are reviewed quarterly. The creator and compiler of the Dow Jones STOXXSM Indexes is STOXX Limited.

The Funds of the Trust will use the Dow Jones STOXX Indexes pursuant to a sub-licensing agreement with an affiliate of UBS Global AM. Such affiliate has entered into an agreement with STOXX Limited and is authorized thereunder to sub-license the Indexes to the Funds. As of the date hereof, STOXX Limited is not affiliated with Trust, the Funds, UBS Global AM to the Exchange.

General Description of the Fund

The Funds offer and issue shares ("Fund Shares") at their net asset value ("NAV") only in aggregations of a specified number of Fund Shares (referred to as a "Creation Unit"), principally in exchange for a basket of equity securities included in the Underlying Index (the "Deposit Securities"), together with a deposit of a specified cash payment (the "Cash Component").⁷ Fund Shares are redeemable only in Creation Units, principally, in exchange for portfolio securities and a specified cash payment. Creation Units are aggregations of 50,000 Fund Shares. The Trust reserves the right to offer a "cash" option for creations and redemptions of Fund Shares. All standard orders to create a Creation Unit must be received by UBS Global AM, as principal underwriter, no later than the close of the regular trading session on the NYSE (ordinarily 4 p.m. New York time) on the date such order is placed in order for creation of Creation Units to be effected based upon the NAV of Funds Shares as next determined on such date after receipt of the order in proper form. In the case of custom orders, the order must be received by UBS Global AM, as principal underwriter, no later than 11 New York time.⁸

⁷ The Cash Component is an amount equal to the difference between the net asset value of the Fund Shares (Per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit Aggregation exceeds the market value of the Deposit Securities), the Cash Component shall be such positive amount. If the Cash Component is a negative number (i.e., the NAV per Creation Unit Aggregation is less than the market value of the Deposit Securities), the Cash Component shall be such negative amount and the creator will received cash in an amount equal to the Cash Component.

⁸ A custom order may be placed by an Authorized Participant in the event that the Trust permits or requires the substitution of an amount of cash to be added to the Cash Component to replace any

"Passive" or Indexing Investment Approach

The Funds seeks to replicate as closely as possible, before expenses, the price and yield of the Underlying Index.

The Fund uses a "passive" or indexing approach in seeking to achieve the investment objectives of each Fund.

Replication

Each Fund uses an "indexing" investment approach, attempting to replicate, before expenses, the price and yield of each Underlying Index. Each Fund generally will invest in all of the stocks comprising its Underlying Index in proportion to their weightings in the Underlying Index. However, each Fund may, in certain circumstances, purchase only a sample of stocks in its Underlying Index in proportions expected by the Advisor to replicate generally the performance of the Index as a whole, choose to overweight a stock in the Index, purchase securities not in the Index which the Advisor are appropriate to substitute for the securities contained in the Index, or utilize other available investment techniques in seeking to track the Index.

Each Fund will invest at least 90% of its total assets in the stocks of the Underlying Index. Each Fund may invest its remaining assets in money market instruments, convertible securities, structured notes and in options and futures contracts. Each Fund also intends to maintain the required level of diversification so as to qualify as a regulated investment company under the Internal Revenue Code (the "Code"). Compliance with the diversification requirements of the Code could limit the investment flexibility of each Fund.

Correlation

An index is a theoretical financial calculation while the ETF is an actual investment portfolio. The performance of each Fund and its Underlying Index will vary somewhat due to, among other things, operating expenses incurred by the Funds, transaction costs, market impact and timing variances. The Fund's Advisory seeks a correlation of 95% or better between the Fund's performance and the price and yield performance of the Underlying Index. A figure of 100% would indicate perfect

Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for trading by such Authorized Participant or the investor for which it is acting. Telephone conference between Elena Daley, Office of General Counsel, NYSE, and Florence Harmon, Division of Market Regulation, Commission, on October 18, 2002.

correlation. Any correlation of less than 100% is called "tracking error."

Industry Concentration Policy

The Funds will not concentrate their investments in an industry (*i.e.* hold 25% or more of its total assets in the stocks of a particular industry or group of industries), except that each Fund will concentrate to approximately the same extent that its Underlying Index concentrates in the stocks of such particular industry or group of industries.

Creations and Redemptions of Fund Shares

The Fund Shares are "created" at their NAV by authorized participants, large investors and institutions, only in Creation Units consisting of 50,000 Shares. A "creator" deposits into each Fund the Deposit Securities and the Cash Component in exchange for 50,000 Fund Shares.

Similarly, Fund Shares can only be redeemed in Creation Units of 50,000 Fund Share, principally in-kind for a specified portfolio of stocks held by the relevant Fund ("Fund Securities") plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities (the "Cash Redemption Amount"). Except when aggregated in Creation Units, Fund Shares are not redeemable. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Creations and redemptions must be made through a firm that is a Depository Trust Company participant and, that has executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit ("Participant Agreement"). The Trust will impose transaction fees in connection with creation and redemption transactions.

Clearance and Settlement

Deposit Securities must be delivered to an account maintained at the applicable local sub-custodian of the Trust on or before 2 p.m., New York time, on the Contractual Settlement Date.⁹ Participant must also make available on or before the Contractual Settlement Date, by means satisfactory

⁹ The "Contractual Settlement Date" is the earlier of (i) the date upon which all of the required Deposit Securities, the Cash Component and any other cash amounts which may be due are delivered to the Trust and (ii) the latest day for settlement on the customary settlement cycle in the jurisdiction where any of the securities of the relevant Fund are customarily traded.

to the Trust, immediately available or same day funds estimated by the Trust to be sufficient to pay the Cash Component next determined after acceptance of the order to purchase Fund Shares, together with the applicable creation transaction fee (as described in the Prospectus). Any excess funds will be returned following settlement of the issue of the Creation Unit.

A Creation Unit will not be issued until the transfer of good title to the Trust of the portfolio of Deposit Securities and the payment of the Cash Component and the creation transaction fee have been completed. When the sub-custodian confirms to the custodian that the required securities included in the portfolio deposit (or, when permitted in the sole discretion of the Trust, the cash value thereof) have been delivered to the account of the relevant sub-custodian, the custodian shall notify UBS Global AM, as the principal underwriter, and the Trust will issue and cause the delivery of the Creation Unit via DTC.

Availability of Information Regarding Fund Shares and Underlying Indices

The list of names and amount of each security constituting the current Deposit Securities, and the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day immediately prior to the opening of business on the Exchange. The list of names and amounts of each security constituting the Fund Securities is also expected to be made available each business day. In addition, an amount representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis, is expected to be disseminated every 15 seconds during the Exchange's regular trading hours, through the facilities of the Consolidated Tape Association ("CTA").

The value of each Underlying Index will be updated intra-day on a real-time basis as individual component securities of the Underlying Index change in price. These intra-day values of the Underlying Indexes will be disseminated every 15 seconds throughout the trading day. In addition, there will be disseminated a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market.

The net asset value of each Fund is calculated by the Funds' custodian and determined each business day, normally

at the close of regular trading of the Exchange (ordinarily 4 p.m. New York time). In addition, the Trust maintains a web site that provides general information about the Funds, including the Funds' prospectus and daily trading volume and closing price for each Fund. The closing price of each Fund is also readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to recreate or redeem Fund Shares, and since each Fund is based on an Index which includes non-U.S. components, there will be disseminated through the facilities of the CTA an updated indicative portfolio value ("Value") for each Fund traded on the Exchange as calculated by a securities information provided ("Value Calculator"). The Value will be disseminated for each Fund on a per Share basis every 15 seconds during regular Exchange trading hours. The equity securities values included in the Value are the values of, and the Deposit Securities disseminated for that trading day. In addition to the value of the Deposit Securities for each Fund, the Value includes the estimated Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. The currency exchange rate used in the calculation of the Value may also differ from that used by the Fund's custodian in the calculation of each Fund's NAV. Therefore, the Value for each Fund on a per Share basis disseminated during the Exchange's trading hours should not be viewed as a real-time update of the NAV of each Fund, which is calculated only once a day. While the Value that will be disseminated immediately prior to the opening of business of the Exchange (currently 9:30 a.m., EST) is expected to be generally very close to the previous day's NAV on a per Share basis, it is possible that each Fund's Value diverge from its NAV during any trading day. In such case, the Value will not precisely reflect the value of the relevant Fund portfolio.

During the trading day, however, the Funds expect that the Value should closely approximate the value per Fund share of the portfolio of securities for the relevant Fund except under unusual circumstances (e.g., in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be different from a Fund's NAV would not be different from circumstances causing any index fund or trust to diverge from its underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding the Funds that would not otherwise be available to the public and is useful to professionals and investors in connection with Fund Shares trading on the Exchange or the creation or redemption of Fund Shares.

For foreign stocks that trade on principal foreign markets during hours that overlap regular trading hours on the Exchange, the Value Calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the principal foreign market or markets are closed but the Exchange is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after such markets close.

Other Characteristics of the Fund

It is anticipated that a minimum of three Creation Units for each Fund will be outstanding at the commencement of trading on the Exchange. The number of Shares per Creation Unit is 50,000.

Fund Shares will be registered in book-entry only form through the Depository Trust Company ("DTC"). Trading in Fund Shares on the Exchange will be effected normally until 4 p.m. each business day. The minimum trading increment for Fund Shares on the Exchange initially will be \$0.01.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with distribution requirements of the Code. Each Fund may make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

Original and Annual Listing Fees

The Exchange original listing fee applicable to the listing of each Fund will be \$5,000. The annual continued listing fee for each Fund will be \$2,000.

Stop and Stop Limit Orders

Commentary .30 to Exchange Rule 13 provides that stop and stop limit orders in an Investment Company Unit shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, the prior approval of a Floor Official is required for the election to be effective.

Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in each Fund. Trading on the Exchange in the Fund Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, making trading in the Fund Shares inadvisable. These may include (1) the extent to which trading is not occurring in the Deposit Security(s) or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition trading in Fund Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rules.¹⁰

Surveillance Procedures

The Exchange's written surveillance procedures for Fund Shares will be similar to the procedures utilized for other Investment Company Units. The Exchange also intends to utilize its existing surveillance procedures to monitor trading in the Fund, including situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security (see the description of the Rule and its application below).

Rule 460.10

Rule 460.10 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the Rule permit specialists in Fund Shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value

of the Fund Shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Fund Shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

Prospectus Delivery

The Commission has granted the Trust an exemption from certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940.¹¹ Any product description used in reliance on a section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds. Any product description used in reliance on the section 24(d) exemptive order will comply with all representations made and all conditions contained in the application for the order.

Suitability

Pursuant to Exchange Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Fund Shares, such member or member organization should make a determination that such Fund Shares are suitable for such customer. If any recommendation is made with respect to such Fund Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Circular to Members

The Exchange will distribute an information circular to its members in connection with the trading in the Fund. The circular will discuss the special characteristics and risks of

¹⁰ Rule 80B.

¹¹ See Investment Company Act Release No. 25738 (October 11, 2002).

trading this type of security. Specifically, the circular, among other things, will discuss what the Fund is, how it is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)¹³ of the Act, in general, and furthers the objectives of section 6(b)(5),¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investor and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange, and, in particular, with the requirements of section 6(b)(5).¹⁵ The Commission believes that the Exchange's proposal to trade the Funds will allow investors to achieve desired investment objectives through the purchase of an instrument linked to the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. These

objectives include participating in or gaining exposure to these indexes while limiting somewhat downside risk and participating in foreign securities markets. In addition, trading of the Funds can produce added benefits to investors through the increased competition between other markets trading the product. Specifically, the Commission believes that NYSE's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock,¹⁶ and by increasing the availability of the Funds as investment tools. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁷

As the Commission noted in greater detail in the order approving iShares (formally "World Equity Benchmark Securities" or "WEBS") for listing and trading on the American Stock Exchange LLC ("Amex"),¹⁸ the estimated cost of individual Fund Shares described herein should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks, including foreign stocks. The Commission also notes that such Funds should provide investors with several advantages over standard open-end investment companies; in particular, investors can trade the Funds continuously throughout the day in secondary markets at negotiated

prices.¹⁹ In contrast, Investment Company Act of 1940 ("Investment Company Act") Rule 22c-1²⁰ limits holders and prospectus holders of open-end management investment company shares to purchasing or redeeming securities of the fund based on the next asset value of the securities held by the fund as designated by the board of directors. Thus, the Funds should allow investors to respond quickly to market changes through intra-day trading for opportunities, expand the opportunity for retail investors to engage in hedging strategies, and reduce transaction costs for trading a portfolio of stocks.

The Commission notes that, although the respective values of the Funds are based on the value of the securities and cash held in the Funds, Fund Shares are not leveraged instruments. Fund Shares are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes. Accordingly, it is appropriate to regulate the Funds in a manner similar to other equity securities. Nonetheless, the Commission believes that the unique nature of the Funds raises certain disclosure, trading, and other issues that need to be addressed. The remainder of this section 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.

A. Disclosure

The Commission believes that NYSE's proposal should provide for adequate disclosure to investors relating to the terms, characteristics, and risks of trading the Funds. All investors in the

¹⁹ The Commission believes that the Funds will not trade at a material discount or premium in relation to their NAV, because of potential arbitrage opportunities. See Amex WEBS Approval Order, *supra* note 16. The mere potential for arbitrage should keep the market price of Fund Shares comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Funds will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 indexes.

²⁰ 17 CFR 270.22c-1. 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 NAV next computed after receipt of an investor's request to purchase, redeem, or resell. The NAV 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, *supra* note 16.

¹² The information circular will also discuss exemptive relief granted by the Commission from certain rules under the Exchange Act. The applicable rules are: Rule 10a-1, Rule 10b-10, Rules 14e-5, Rules 10b-17, Rule 11d1-2, Rules 15c1-5 and 15c1-6, and Rules 101 and 102 of Regulation M under the Exchange Act.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in the Funds can redeem them in creation unit size aggregations (of 50,000 Fund Shares) only plus cash in an amount equal to the difference between the NAV of the Fund Shares being redeemed and the value of the Fund Securities.

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

¹⁸ The Funds are similar in nature were formerly known as World Equity Benchmark Securities ("WEBS") and were approved for listing and trading on the Amex in 1996. See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) ("Amex WEBS Approval Order"). The Commission hereby incorporates by reference the discussion and rationale for approving WEBS provided in the Amex WEBS Approval Order.

Funds will receive a prospectus or a Product Description²¹ regarding the product. The prospectus or Product Description will address the special characteristics of the Funds, including a statement regarding their redeemability and method of creation, and that Fund Shares are not individually redeemable.

The Commission notes that the Exchange has represented that it will also distribute an information circular all NYSE members prior to the commencement of trading of the Funds explaining the unique characteristics and risks of the Funds. The circular will note, for example, Exchange member responsibilities, including that, before an Exchange member undertakes to recommend a transaction in the Funds, it should make a determination that it is in compliance with applicable rules of other self-regulatory organizations of which it is a member, including suitability rules. The circular will also address members' responsibility to deliver a prospectus or product description to all investors purchasing the Funds, as well as highlight the characteristics of the Funds, including that Fund Shares are only redeemable in Creation Unit size aggregation.²² The information circular will also discuss the Trust's option of redeeming the Funds solely for cash, which is unique to these products.

B. Dissemination of the Fund Portfolio Information

The Commission believes that investors will be provided with timely and useful information concerning the value of the Funds. The Commission notes that the information will be disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information will be disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, regardless of where the transaction is executed. In addition, because the value is expected to closely track the applicable Fund series, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given Fund series.²³ In the

Amex WEBS Approval Order, the Commission noted that it expected Amex to monitor the disseminated Value, and if Amex determines that the Value does not closely track applicable WEBS/iShares series, it will arrange to disseminate an adequate alternative. Here, the Commission expects the NYSE to similarly monitor the disseminated Value of the Funds.

C. Surveillance

The Commission notes that NYSE has submitted surveillance procedures for the Funds and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

D. Specialists

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 listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem Fund Shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the

Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.²⁴

E. Accelerated Approval

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.²⁵ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing and trading of the Fund Shares is consistent with the Act, and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interests.²⁶ The Commission further finds that accelerated approval will enable the Exchange to begin listing and trading the Fund Shares on the Exchange immediately. The Commission therefore approves this proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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 submission, 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 person, 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

²¹ See Investment Company Release No. 25623 (June 25, 2002).

²² The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a-1, Rule 10b-10; Rule 14e-5; Rule 10b-17; Rule 11d1-2; Rules 15c1-5 and 15c1-6; and Rules 101 and 102 of Regulation M under the Exchange Act.

²³ In addition, the Amex WEBS Approval Order states that the statement of additional information

("SAI") to the preliminary prospectus states that each series will calculate its NAV per share at the close of the regular trading session for the Amex on each day that the Amex is open for business. NAV generally will be based on the last quoted sales price on the exchange where the security primarily is traded. See Amex WEBS Approval Order, *supra* note 16. Such NAV calculations will be similarly done for the Funds.

²⁴ The Commission notes that with respect to the Funds, broker-dealers and other persons are cautioned in the prospectus and/or the Fund's SAI 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.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR-NYSE-2002-51 and should be submitted by November 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46682; File No. SR-Phlx-2002-51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Amending Exchange Rule 607, Registration Fee, and Deleting Exchange Rule 608, Charge for Making Transaction

October 17, 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 September 20, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed an amendment to the proposed rule change on October 2, 2002.³ The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ The Commission is

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Exchange Rule 607, Registration Fee, to conform the rule to section 31 of the Act,⁷ as amended by H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act").⁸ In addition, the Exchange proposes to delete Exchange Rule 608, Charge for Making Transaction.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

Rule 607. *Transaction* [Registration] Fee

Every member and member organization *shall pay to the Exchange in such manner and at such time as the Exchange shall direct, the fees specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder, for all sales upon the Exchange of securities specified in Section 31 of the Securities Exchange Act of 1934, and rules thereunder.* [clearing transactions effected on the Exchange, shall pay to the Exchange the sum of one cent for each \$500 or fraction thereof of the dollar volume of his or its sales upon the Exchange (other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this Section by the Secretary of the Treasury), in reimbursement to the Exchange of the Registration Fee imposed under Section 31 of the Securities Exchange Act of 1934, as amended, in accordance with such rules as the Committee may prescribe.]

[Rule 608. Charge for Making Transaction]

[Every member or member organization who is required by Rule 607 to pay any sum to the Exchange in respect of any sale upon the Exchange shall charge and collect from the person for whom he was acting in making such transaction an amount, which shall be determined by Section 31 of the Securities Exchange Act of 1934 as the sum of one cent for each \$500 or

fraction thereof of the dollar amount involved in such transaction.]

[Supplementary Material:]

[Registration Fee]

.[01 Every member and member organization engaged in clearing or settling transactions effected upon the Exchange shall maintain a daily record of the aggregate dollar amount of the sales of securities made upon the Exchange and cleared or settled by him or it. The amount of money shall be computed upon the actual sales price, disregarding commissions, taxes or accrued interest on bonds. Blotter dates shall be used throughout. All sales on the Exchange shall be included, whether the securities are tax-exempt or not, except securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States or such securities issued or guaranteed by corporations in which the United States has a direct or an indirect interest as shall be designated for exemption from the provisions of this section by the Secretary of the Treasury. Odd-lot dealers shall record both the full lots and the odd lots which they sell on the Exchange. If a member organization clears and settles a transaction for a member or member organization that in turn clears it for another principal, only the member organization settling the transaction shall include it in its record. Monthly reports of the daily totals above referred to shall be submitted to the Secretary's office in the manner described below.

.02 At or before 10:30 o'clock a.m. on the 10th day of each month each member or member organization required to report to the Exchange shall submit a report on a form supplied by the Exchange showing: aggregate dollar sales volume; the Registration Fee due thereon; principal amount of bonds; number of shares of stock and number of rights to subscribe.

.03 Every such reporting member and member organization shall pay to the Exchange a sum equal to one cent for each \$500 or fraction thereof of the total aggregate dollar sales volume reported monthly.

.04 With respect to all transactions which are required by these directions to be included in the foregoing report, the member or member organization responsible for reporting any transaction to the Exchange shall charge to the account, as billed, for which such transaction was made the sum of one cent for each \$500 or fraction thereof represented by such transaction.

Whenever the account against which such charge is made is that of a member or member organization who is acting

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, SEC, dated October 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the basis upon which the proposal would become effective under the Act and requested that the Commission waive the five-day pre-filing notice requirement.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁷ See 15 U.S.C. 78e.

⁸ See Pub. L. No. 107-123, 115 Stat. 2390 (2002).