

Dated: November 1, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28325 Filed 11-4-02; 11:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46738; File No. SR-Amex-2001-32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by American Stock Exchange LLC Relating to the Listing of Fixed Income Trust Receipts Under Rule 1000A.

October 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 25, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. On October 21, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval.

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

Amex proposes to list under Amex Rule 1000A ("Index Fund Shares") "Fixed Income Trust Receipts" ("FITRs") issued by the Exchange Traded Fund ("ETF") Advisors Trust ("Trust"), as described below, whose portfolio will consist of investment grade government debt securities.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940⁴ ("1940 Act") as well as the Exchange Act.⁵ The Exchange currently trades over 80 different index funds under Rule 1000A based on various stock indexes,⁶ as well as indexes based on fixed income securities.

The Exchange proposes to list FITRs under Rule 1000A issued by index funds of ETF Advisors Trust ("Trust"), whose portfolio will consist of investment grade government debt securities (e.g., securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity).⁷

1. Fixed Income Trust Receipts

The Trust is an open-end management investment company offering a number of separate investment portfolios of fixed income securities (each such portfolio an "Index Fund" or a "Fund"). These securities would be listed under Amex Rules 1000A *et. seq.*, including Amex Rule 1000A as it is proposed to be amended herein. Each Index Fund that is the subject of this filing will hold a portfolio of securities selected to reflect the duration, and which seek to closely match, before fees and expenses, the total return of a specified fixed income securities index (individually,

an "Underlying Index" and collectively, the "Underlying Indexes").⁸ The Underlying Indexes are the Ryan 10 Year Treasury Index,⁹ the Ryan 5 Year Treasury Index,¹⁰ the Ryan 2 Year Treasury Index,¹¹ and the Ryan 1 Year Treasury Index.¹² All of the Underlying Indexes¹³ are based on total returns of various maturities of U.S. Treasury Securities (defined below).

The Underlying Indexes were created by Ronald J. Ryan and Ryan Holdings LLC, and are compiled and maintained by Ryan Labs Inc. (collectively, the "Index Provider"). Ryan Labs Inc. has calculated and published each Underlying Index or its equivalent predecessor and related data for over 10 years. The construction, calculation model and components of each Underlying Index are based upon measurable objective events, instruments and standards; these have remained consistent since initial publication in all cases except one where the 1-year Index had to be adjusted to reflect the U.S. Treasury's

⁸ The Trust, ETF Advisors, LLC. ("Advisor"), and ALPs Distributors, Inc. ("Applicants") have filed with the Commission an Application for Orders ("Application") under Section 6(c) of the 1940 Act for the purpose of exempting the Index Funds from various provisions of the 1940 Act and rules thereunder. See Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002) (File No. 812-12843). The Commission granted the requested exemptive relief. See Investment Company Act Release No. 25759 (September 27, 2002). The information provided in this Rule 19b-4 filing relating to the Index Funds is based on information included in the Application. Additional information regarding the Index Funds is included in the Application.

⁹ The Ryan 10 Year Treasury Index is based on the return of the most recently auctioned 10 year Treasury note. Calculated once each day, the Index is available for periods back to November 1, 1977. The 10 Year Treasury note is replaced at each new quarterly auction.

¹⁰ The Ryan 5 Year Treasury Index is based on the return of the most recently auctioned 5 year Treasury note. Calculated once each day, the Index is available for periods back to August 28, 1979. The 5 Year Treasury note is replaced at each new quarterly auction.

¹¹ The Ryan 2 Year Treasury Index is based on the return of the most recently auctioned 2 year Treasury note. Calculated once each day, the Index is available for periods back to August 24, 1973. The 2 Year Treasury note is replaced at each new monthly auction.

¹² Since May 23, 2001, the Ryan 1 Year Adjusted Treasury Index has been based on (a) the return of the most recently auctioned 6 Month Treasury bill, weighted two-thirds, and (b) the return of the most recently auctioned 2 year Treasury note, weighted one-third. Calculated once each day, the original Index was created on December 31, 1988. The 6 Month Treasury bill is replaced at each weekly auction, and the 2 Year Treasury note is replaced at each new monthly auction.

¹³ Except for the Ryan 1 Year Adjusted Treasury Index, the Underlying Indices listed above have been calculated daily since March 21, 1983; Underlying Indices for dates prior to March 21, 1983 have been constructed from historical databases.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This notice, representing Amendment No. 1, replaces the original Rule 19b-4 filing in its entirety.

⁴ 15 U.S.C. 80a.

⁵ 15 U.S.C. 78a.

⁶ Standard & Poor's Depository Receipts®, S&P MidCap SPDRs, DIAMONDS®, and NASDAQ-100 Index Tracking Stock(sm) are unit investment trust securities listed under Amex Rules 1000 *et seq.* applicable to Portfolio Depository Receipts.

⁷ The Commission previously approved amendments to Rule 1000A(b) to specify that Index Fund Shares (1) may be based on a portfolio of fixed income securities; (2) may be issued by an investment company in return for a specified portfolio of fixed income securities and/or cash, and (3) may be redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash. See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (Approving File No. SR-Amex-2001-35).

cessation of issuance of 1-year Treasury bills.

All of the Underlying Indexes are widely disseminated by various media. In particular, the information pertaining to the Underlying Indices are published on a daily (*e.g.*, Ryan Indexes,¹⁴ Bloomberg, Reuters and Telerate), weekly (*e.g.*, Barrons and the New York Times), bi-weekly (*e.g.*, Grant's Interest Rate Observer), and monthly basis (*e.g.*, Bondweek, IOMA's Report on Managing 401(k) plans, DC Plan Investing, S&P Fund Services and Check-free Database).

The portfolio securities of the Index Funds will primarily consist of investment grade debt securities issued or guaranteed by the U.S. Treasury ("Treasury Securities"), by an agency or instrumentality of the U.S. Government, or by a government-sponsored entity such as the Government National Mortgage Association ("Ginnie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") and Fannie Mae, formerly the Federal National Mortgage Corporation (collectively, "Agency Securities" and, together with "Treasury Securities," referred to herein as "Government Securities"). Government Securities may be backed by the full faith and credit of the U.S. Treasury, by the right to borrow from the U.S. Treasury, or by the agency or instrumentality issuing or guaranteeing the security.

Each Index Fund will issue, on a continuous offering basis, one or more groups of a fixed number of Fund Shares (*e.g.*, 50,000 shares) with a market value of approximately \$5,000,000 to \$10,000,000 for each such group of Index Fund Shares (a "Creation Unit Aggregation").

FITRs will not be individually redeemable; only FITRs combined into Creation Unit Aggregations will be redeemable. It is expected that the initial net asset value ("NAV") of FITRs will be established at approximately \$85 per FITR.¹⁵

ALPs Distributors, Inc. is a broker-dealer registered under the Exchange Act. It will act as the distributor and principal underwriter of Creation Unit Aggregations of FITRs ("Distributor") on an agency basis. The Distributor is not an affiliated person of the Trust or the Advisor. The Bank of New York

("BNY") will act as administrator ("Administrator"), fund accountant, custodian ("Custodian"), transfer agent and dividend disbursing agent for each Index Fund, and securities lending agent of the portfolio of securities held by a fund ("Portfolio Securities").

FITRs will be registered in book-entry form only and the Index Funds will not issue individual share certificates. The Depository Trust Company ("DTC") or its nominee will be the record or registered owner of all outstanding FITRs. The records of DTC or DTC participants ("DTC Participants") will reflect the beneficial ownership of FITRs. FITRs will trade on the Exchange during the hours of 9:30 a.m. to 4:15 p.m., (Eastern Time ("ET")).

2. Investment Objectives and Principal Investment Strategies

Each Underlying Index is based on one or more specified debt security series issued by the U.S. Treasury. Each Underlying Index serves as a portfolio benchmark by specifying a selected debt instrument or instruments that correspond to a specified maturity on the U.S. Treasury yield curve. The Index Funds and Underlying Indexes that are subject of this Rule 19b-4 filing are as follows:

Name of Index Fund	Ryan Index
Treasury 10 FITR ETF	Ryan 10 Year Treasury Index.
Treasury 5 FITR ETF	Ryan 5 Year Treasury Index.
Treasury 2 FITR ETF	Ryan 2 Year Treasury Index.
Treasury 1 FITR ETF	Ryan 1 Year Adjusted Treasury Index.

The Underlying Indexes, together with the other Treasury indexes maintained by the Index Provider, map the U.S. Treasury yield curve as described above.¹⁶ The design principle behind each such index is that the most reliable measure of interest rates is the U.S. Treasury yield curve. The Ryan 10 Year, 5 Year, and 2 Year Treasury Indices and 1 year Adjusted Treasury Index also rely on the principle that the most liquid measure of every point on the U.S. Treasury yield curve is the "on-the-run" ("OTR") U.S. Treasury instrument in any given maturity range.¹⁷

The respective investment objective of each Index Fund will be to provide investment results that seek to closely match the total return, before fees and

expenses, of the relevant Underlying Index. A fund's total return will be included in the prospectus in a manner consistent with the requirements of Form N-1A under the 1940 Act.¹⁸ Each Index Fund will hold Portfolio Securities that in the aggregate will closely match the cash flows of its Underlying Index, meaning that each Fund will invest in a range of fixed income instruments based upon the Advisor's application of quantitative analytical procedures to provide a duration and cash flow profile similar to that of the Fund's respective Underlying Index. In seeking to achieve the respective investment objective of each Index Fund, the Advisor will invest at least 90% of each Fund's total assets in Treasury Securities and other Government Securities. This is a fundamental investment policy which can only be changed by shareholder vote. As a non-fundamental investment policy that can be changed by the Board of Trustees ("Board") without shareholder vote, each Fund will invest at least 80% of its total assets in Treasury Securities that are backed by the full-faith and credit of the U.S. Government. An Index Fund may also invest up to 10% of its total assets in repurchase agreements, 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 Fund's Underlying Index. Applicants expect that the returns of each Fund should be highly correlated with the return of its Underlying Index and that the correlation coefficient between each Fund and its Underlying Index will exceed 98% over extended periods and that the annual tracking error will be less than one percentage point of total return relative to its Underlying Index. Annual tracking error will be monitored by the Advisor under the supervision of the Board of Directors of the Fund. Applicants expect that ongoing adjustments will be made in the portfolio of each Index Fund in order to provide investment results in keeping with its investment objective.

The Underlying Indices are based on the OTR Treasury Securities yield curve. An OTR Treasury Security in a given maturity range, such as the six-month bill, two, five and ten-year notes and thirty-year bond, is the most recently auctioned Treasury Security issue with that stated maturity. The OTR Treasury rates for a given maturity have been generally regarded as the

¹⁴ See <http://www.ryanindex.com> and <http://www.ryanlabs.com>.

¹⁵ The Applicants believe that a convenient trading range will be between \$50-\$200 per FITR and each Index Fund reserves the right to declare a stock split or a reverse stock split if the trading price over time falls outside an appropriate trading range price. The Prospectus for each Index Fund will disclose these items, but such items may not be included the product description of the Funds.

¹⁶ See notes 9-13, *supra*.

¹⁷ "On the run" means the most recent auctioned U.S. Treasury Security in a specified maturity range (*e.g.*, 5 years).

¹⁸ The product descriptions for the Index Funds may not be include information pertaining to a Fund's total return.

“ultimate” fixed income benchmarks for U.S. dollar-denominated debt because the OTR Treasury instrument yield is the base yield for each maturity against which all other Treasury instruments and most other dollar-denominated fixed income instruments are evaluated. Other dollar-denominated debt instruments are usually traded or referenced at a spread to the appropriate OTR Treasury rate.

To ensure that each Underlying Index correctly reflects the current OTR rate, the Index Provider updates each such index by replacing the component security or securities of such index (the “Component Security or Securities”), so that the old OTR Treasury Security (now the most recent “off-the-run” Treasury Security) is replaced with the new OTR Treasury Security at the time such new Treasury Security is auctioned (this process is referred to as a “roll” strategy or “rolling” the old OTR position into the new OTR Treasury Security). For example, the Ryan 2 Year Treasury Index is updated by rolling the old OTR position in a two-year note to the new OTR two-year note at the time of each Treasury auction of a two-year note. Returns for each such Underlying Index are calculated to reflect the prices and yields of its component securities, based on the assumption that a “roll” strategy is employed.

3. Qualification as a Regulated Investment Company

Each Index Fund intends to qualify for and to elect treatment as a Regulated Investment Company (“RIC”) for U.S. federal income tax purposes, with the result that each Fund effectively will be treated as if it were a separate entity and will generally not be subject to U.S. federal income tax on its income to the extent it distributes substantially all of its investment company taxable income and net capital gains and satisfies other applicable requirements of the Internal Revenue Code.

4. Description of the Underlying Indices and OTR Treasury Securities

Each Underlying Index is based on one or more specified debt security series issued by the U.S. Treasury. Each Underlying Index serves as a portfolio benchmark by specifying a selected debt instrument or instruments that correspond to a specified maturity on the U.S. Treasury yield curve.

Rather than matching an Index Fund’s Portfolio Securities exclusively to the Component Security or Securities of its Underlying Index, the Advisor, when seeking to closely match the average dollar-weighted duration of the portfolio

of the Index Fund to the duration of its Underlying Index, will also invest in Government Securities such as other Treasury Securities, Agency Securities, or related repurchase agreements, futures contracts, options and other derivative instruments. In addition to Government Securities, the Advisor may use repurchase agreements, futures, options and other derivative or synthetic instruments in constructing the portfolio of an Index Fund. The actual positions held in the portfolio of a Fund may consist of OTR Treasury Securities, “off-the-run” Treasury Securities,¹⁹ other Treasury Securities such as STRIPS²⁰ of any duration, Agency Securities and related repurchase agreements, futures contracts, options and other derivative instruments, subject to limitations discussed in the Application.

The Advisor will be constrained when managing the portfolio of each Index Fund to an average effective duration for the entire Fund’s portfolio that will differ by no more than 1 month from the duration of the Ryan 1 Year Adjusted Treasury Index for the 1 year FITRs, by no more than 2 months from the duration of the Ryan 2 Year Treasury Index for the 2 year FITRs, by no more than 6 months from the duration of the Ryan 5 Year Treasury Index for the 5 year FITRs, and by no more than 6 months from the duration of the Ryan 10 Year Treasury Index for the 10 year FITRs. If an Index Fund does not meet those standards at the close of trading on any Business Day, the portfolio of such Fund will be brought into compliance as quickly as practicable.

5. Sales of FITRs

FITRs of an Index Fund will be issued and sold only in Creation Unit Aggregations of a fixed number of shares (e.g., 50,000 shares), as specified in the prospectus for such Fund. Creation Unit Aggregations will be sold through the Distributor on a continuous basis at the NAV per share next determined after an order in proper form is received. The NAV of each Index Fund is expected to be determined as of the close of the regular trading session on the New York Stock Exchange (“NYSE”), (ordinarily 4:00 p.m., (ET))²¹ on each Business Day (defined immediately below), and the Trust will sell and redeem Creation Unit

Aggregations of each Index Fund only on Business Days.²²

Creation Unit Aggregations may be purchased only by or through an “Authorized Participant” which is any entity that is a DTC Participant, which has entered into a Participant Agreement (defined below) with the Administrator and the Distributor. Such Authorized Participant will agree pursuant to the terms of such agreement (a “Participant Agreement”) on behalf of itself or any investor on whose behalf it will act, as the case may be, to certain conditions, including that such Authorized Participant will make available for each purchase of Creation Unit Aggregations an amount of cash sufficient to pay the Balancing Amount, once the NAV of a Creation Unit Aggregation is next determined after receipt of the purchase order in proper form, together with a Transaction Fee imposed by each Fund in connection with effecting purchases or redemptions. The Authorized Participant may require an investor to enter into an agreement with such Authorized Participant with respect to certain matters, including payment of the Balancing Amount. An investor does not have to be an Authorized Participant, but must place an order through, and make appropriate arrangements with, an Authorized Participant. An Authorized Participant is not required to be a member of the Exchange.

The Applicant states that in order to keep costs low and permit each Index Fund to be as fully invested as possible, FITRs of each Index Fund generally will be purchased in Creation Unit Aggregations in exchange for the purchaser’s “in-kind” deposit of a portfolio of particular securities (“Deposit Securities”), together with the deposit of a specified cash payment (“Balancing Amount”)(collectively with the Deposit Securities, a “Portfolio Deposit”). The Deposit Securities will consist of a portfolio of particular securities designated by the Advisor in the aggregate to closely match the total return of the relevant Underlying Index.²³

²² A “Business Day” is defined as any day that the (i) Government Securities markets in the United States, (ii) the Custodian and (iii) the NYSE, the Amex or relevant other exchange (as described in the Application) are open for business. The term Business Day, therefore does not include certain federal holidays when banks and the Government Securities market are closed but national securities exchanges are open, currently Columbus Day and Veterans Day.

²³ The Custodian of each Index Fund will make available, prior to the Exchange’s opening, the Creation List identifying Deposit Securities required for a Creation Unit aggregation. See Dissemination of Fund Information, below.

¹⁹ “Off-the-Run” means U.S. Treasury securities auctioned before the current on-the-run issue.

²⁰ Separate Trading of Registered Interest and Principal of Securities (“STRIPS”).

²¹ The nominal “closing time” for the Government Securities markets is generally 3:00 p.m., ET. Trading; however, although less active, continues in such markets after 3:00 p.m., ET.

The Balancing Amount is an amount equal to the difference between (1) The NAV (per Creation Unit Aggregation) of the Index Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such sum referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and the Deposit Amount.

6. Redemption of FITRs

It is presently expected that redemptions of Creation Unit Aggregations generally will be made by each Index Fund through delivery of designated Portfolio Securities ("Redemption Securities") and a specified cash payment ("Cash Redemption Payment") collectively, a "Redemption Payment." The Custodian, upon receipt of the relevant information from the Advisor, will cause to be published daily the list of Deposit Securities which a creator of Creation Unit Aggregations must deliver to an Index Fund ("Creation List") and the list of Redemption Securities which a redeemer will receive from the Index Fund ("Redemption List").

The Applicants note that in some circumstances it may not be practicable or convenient for an Index Fund to operate on an in-kind basis exclusively. Therefore, the Trust may permit, in its discretion, with respect to an Index Fund, under certain circumstances, an "in-kind" purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. The Trust reserves the right to determine in the future that FITRs of an Index Fund may be purchased in Creation Unit Aggregations on a "cash-only" basis. The decision to permit cash-only purchases of Creation Unit Aggregations, to the extent made at all in the future, would be made if the Trust and the Advisor believed such method would reduce the Trust's transaction costs or would enhance the Trust's operating efficiency. This would likely happen only in limited circumstances.

The Custodian will make available through the National Securities Clearing Corporation ("NSCC") on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. ET) the Creation List which will contain the names and the required number and maturity of the Deposit Securities included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for each Index Fund. Such Portfolio Deposit will be applicable, subject to any

adjustments to the Balancing Amount as described below, in order to effect purchases of Creation Unit Aggregations of a given Index Fund until such time as the next-announced Portfolio Deposit composition is made available.

Creation Unit Aggregations of each Index Fund will be redeemable at their NAV per FITR next determined after receipt of a request for redemption by the relevant Index Fund. Each Index Fund has, pursuant to its organizational documents, the right to make redemption payments in respect of an Index Fund in cash, in-kind, or in a combination of each, provided the value of its redemption payments on a Creation Unit Aggregation basis equals the NAV per the appropriate number of FITRs of such Index Fund.

Applicants currently contemplate that Creation Unit Aggregations of each Index Fund will be redeemed principally "in-kind" by the delivery of Redemption Securities (together with the Cash Redemption Payment). Creation Unit Aggregations of any Index Fund will generally be redeemable on any Business Day in exchange for the Cash Redemption Payment and Redemption Securities in effect on the date a request for redemption is made, along with payment of a Transaction Fee. In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Index Fund, the Index Fund will also deliver to the redeeming beneficial owner (through the Authorized Participant) in cash the Cash Redemption Payment, which on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Redemption List is not identical to the Creation List. To the extent that the Redemption Securities on the Redemption List have a value greater than the NAV of FITRs being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner (through the Authorized Participant) to the Index Fund. The Index Fund will transfer the Cash Redemption Payment and the Redemption Securities to the redeeming beneficial owner on T+1, which is the Business Day following the Transmittal Date on which request for redemption is made. The Index Fund may also make redemptions in "cash in lieu" of transferring one or more Redemption Securities to a redeemer if the Index Fund determines, in its discretion, that such method is warranted in the interest of such fund.

7. Passive Management of the Index Funds

The Applicant characterizes the Index Funds as being passively managed. According to the Applicants, passive strategies attempt to track the performance of an underlying benchmark with a stated minimum degree of precision. The analytics behind these strategies focus on reducing negative benchmark tracking differences by bringing a fund's portfolio cash flows in line with those of its benchmark index. In contrast, active managers seek to outperform the benchmark by taking risks involving departures from the benchmark. According to the Applicants, the FITRs' index tracking objective and methodology identifies and classifies the FITRs with other index-based ETFs and fixed income index funds. The Applicants states that any incidental out-performance of an Index Fund's Underlying Index will be achieved without taking significant interest rate or credit risk; the Advisor will look for securities lending and valuation opportunities in cash flow packaging or will use instruments with similar cash flows which are temporarily selling at attractive prices. Applicants note that these are all common fixed income index fund techniques.

8. The FITRs and Creation Unit Aggregation Clearing Process

FITRs traded in the secondary market will be cleared and settled on a "regular way" basis, currently on T+3, through DTC and NSCC and therefore, these transactions will be processed and settled pursuant to DTC and NSCC procedures including the NSCC guarantee of settlement within the NSCC system. The Amex provides daily trade data to the NSCC for clearing in accordance with NSCC rules and procedures.

Purchases and redemptions of Creation Unit Aggregations of FITRs will settle according to the government securities markets' convention of T+1 settlement. Creation Unit Aggregations of FITRs will be debited or credited directly by BNY, as Transfer Agent, in the DTC accounts of the Authorized Participants. BNY will effect the Fund's side of the transaction (issuance of the FITRs owed to the Authorized Participant in the case of a creation, and the transfer of Redemption Securities to the Authorized Participant in the case of a redemption) only after confirmation of receipt of the Authorized Participant's incoming cash and/or security transfer (Deposit Securities and Balancing Amount in the case of a creation, and

a Creation Unit Aggregation of FITRs and Cash Redemption Payment in the case of a redemption).

When purchasing FITRs in Creation Unit Aggregations, the Authorized Participant will tender to BNY in its capacity as Custodian, the Deposit Securities through Fedwire, the Government Securities Clearing Corporation or any other means acceptable to BNY for the delivery of Government Securities and Balancing Amount by any means acceptable to BNY. As Transfer Agent, BNY will observe the pending receipt of any Balancing Amount and the Deposit Securities go "final" on its settlement system, and take the necessary steps to release the FITRs in Creation Unit Aggregations and credit them in real time to the Authorized Participant's DTC account, completing the transaction. Once such FITRs are acknowledged and credited by DTC, the delivery will go "final" and appear in the Authorized Participant's DTC account, all on T+1.

Alternatively, Creation Unit Aggregations may be purchased by an Authorized Participant in advance of receipt by BNY of all or a portion of the applicable Deposit Securities. In these circumstances, the Authorized Participant must deposit with BNY, as Custodian, cash in an amount equal to the sum of (i) the Balancing Amount, plus (ii) 105% of the market value of any, or all, of the undelivered Deposit Securities (the "Additional Cash Deposit"). An additional amount of cash will be, required to be deposited with BNY pending delivery of the missing Deposit Securities to the extent necessary to maintain the Additional Cash Deposit with BNY in an amount at least equal to 105% of the daily market-to-market value of the missing Deposit Securities. To the extent that missing Deposit Securities are not received by 1:00 p.m., ET, on the first Business Day next following the day on which the purchase order is deemed received by the Distributor or in the event a market-to-market payment is not made within one Business Day following notification by the Distributor that such a payment is required, the Trust may instruct BNY to use the cash on deposit to purchase the missing Deposit Securities in order to complete the purchase order. The Authorized Participant will be liable to the Trust and Fund for the costs incurred by the Trust in connection with any such purchases. These costs will include the amount by which the actual purchase price of the Deposit Securities exceeds the market value of such Deposit Securities on the day the purchase order was deemed received by

the Distributor plus the brokerage and related transaction costs associated with such purchases. BNY will return any unused portion of the Additional Cash Deposit once all of the missing Deposit Securities have been properly received by BNY or purchased by the Trust and deposited into the Trust.

When redeeming FITRs in Creation Unit Aggregations the Authorized Participant will transfer to BNY, as Transfer Agent for cancellation, the requisite amount of FITRs through DTC. The Authorized Participant will deliver to BNY as Custodian a cash payment equal to any differential that is required to be paid through the Fedwire. BNY will then transfer the requisite Redemption Securities and any Cash Redemption Payment for receipt by the Authorized Participant on T+1.

In all instances, if an order is not placed in proper form or federal funds in the appropriate amount are not received in accordance with the terms of the Participant Agreement, BNY may reject the order.

9. Dividend Distributions

Dividends from net investment income will be declared and paid at least annually by each Index Fund in the same manner as by other open-end investment companies. Certain of the Index Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year. The dividend amount paid by each Index Fund will be made available on <http://www.amextrader.com>.

The Trust will not make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make a dividend reinvestment service available to their clients. The Statement of Additional Information ("SAI") will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker.

The Trust will furnish notifications with respect to each distribution and an annual notification as to the tax status of such Fund's distributions to the DTC Participants for distribution to beneficial owners of FITRs of each Index Fund. The Trust will also distribute its annual report containing audited financial statements and copies of annual and semi-annual shareholder reports to the DTC Participants for distribution to beneficial owners of FITRs.

10. Dissemination of Fund Information

The Custodian of each Index Fund, through NSCC, will make available prior to the opening on the Exchange on each Business Day, the Creation List identifying by name and quantity the Deposit Securities required for a Creation Unit Aggregation, the Redemption List identifying by name and quantity the Redemption Securities for such Index Fund, as well as information regarding the Balancing Amount and the Cash Redemption Payment. The NAV for each Index Fund will be calculated and disseminated on each Business Day by the Custodian in the manner described in the SAI for each such Fund. On Business Days, the Amex with respect to each Index Fund intends to disseminate, every 15 seconds, during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), Network B, an amount per FITR for each Index Fund.

In this regard, the Amex will disseminate an amount per FITR every 15 seconds, as stated above, for each Index Fund representing its approximate intraday value: The IntraDay Proxy Value ("IDPV"). The data used to provide the IDPV for FITRs will come from third party pricing sources that frequently obtain dealers' yield quotes for the OTR Treasuries and also for the quoted spreads applicable to various off the run Treasuries and other government securities.

The IDPV will be calculated by the Amex but it will not be calculated on days the Government Securities markets are closed and the Amex is open. To calculate the IDPV, the Amex intends to obtain primary pricing information from Reuters but may use other or additional third-party pricing sources in the event that Reuters' pricing information becomes unavailable.²⁴ The Amex will not be involved in, or responsible for, the calculation of the estimated Balancing Amount nor will it guarantee the accuracy or completeness of the IDPV. Neither the Trust nor any Index Fund will be involved in, or responsible for, the calculation or dissemination of

²⁴ Applicants have chosen to use Reuters initially, as the source for primary bond pricing information because it is a major provider of financial data information, including bond-pricing information. Applicants have been advised that Reuters obtains Government Securities pricing information directly from major participants in the government securities markets and updates such information on a frequent basis. In the future, another third-party pricing data provider may be utilized if Applicants believe that such source provides equivalent or more accurate data, and such a change in the primary data provider will be fully disclosed.

the IDPV, and will make no warranty as to its accuracy.

The Trust intends to maintain a website that will include the Prospectus and SAI, as well as additional quantitative information on a per FITR basis, including, but not limited to: (a) The prior Business Day's NAV and the bid price (the "Bid Price")²⁵ at the time of calculation of such NAV, and a calculation of the premium or discount of the 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 previous calendar quarters. The Amex intends to disseminate a variety of data with respect to each Index Fund listed on the Amex on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, dividends, shares outstanding, estimated cash amount, and total cash amount per Creation Unit Aggregation will be made available daily prior to the opening of the Amex. When and if yield and spread quotations for each Index Fund are made available, they will not be disseminated by the Index Fund. However, the yields of the underlying OTR Treasuries are widely available through various quotation services (e.g., Bloomberg, Reuters, ILX Systems).

The Exchange states that daily and 3:00 p.m. market prices of each Index Fund's Deposit Securities are readily available from a variety of sources, including, as applicable, the Exchange, automated quotation systems, published or other public sources or on-line information services such as Dow Jones Capital Markets, Bridge and Bloomberg. Similarly, the Exchange states that information regarding market prices and volume of FITRs will be broadly available on a real time basis throughout the trading day. Information on the Underlying Indices will be limited or unavailable on days when the Government Securities markets are closed. The previous day's closing price and volume information for FITRs will be published daily in the financial sections of many newspapers.

11. Criteria for Initial and Continued Listing

FITRs are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. A minimum of two Creation Units (e.g., 50,000 FITRs per Creation Unit) will be

required to be outstanding at the start of trading. This minimum number will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of the applicable Index.

12. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of FITRs is \$5,000 for each Index Fund. In addition, the annual listing fee applicable to the Fund under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding shares in all Index Funds of the Trust listed on the Exchange.

13. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including FITRs as eligible for this treatment.²⁶

14. Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including FITRs. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

15. Prospectus Delivery

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 applicable Product Description delivery obligation to investors purchasing FITRs. The Trust's Application included a request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act,²⁷ which the Commission granted.²⁸ Therefore, Amex Rule 1000A, Commentary .03 applies. The product description used in reliance on the section 24(d) exemption will comply with all representations made therein and all conditions thereto.

16. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C (b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including FITRs. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in securities underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁹ In addition, trading in Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

17. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Index Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

18. Purchases and Redemption in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

19. Surveillance

Exchange surveillance procedures applicable to trading in the proposed FITRs are comparable to those

²⁵ The Bid Price per FITR of an Index Fund is determined using the highest bid price on the Exchange on which FITRs of such Index Fund are listed for trading as of the time of calculation of such Index Fund's NAV.

²⁶ See Securities Exchange Act Release No. 29063, note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR-Amex-90-31) regarding Exchange designation for equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

²⁷ See Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002).

²⁸ See Investment Company Act Release No. 25759 (September 27, 2002).

²⁹ See Amex Rule 918C.

applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the FITRs.³⁰

Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,³¹ in general, and furthers the objectives of section 6(b)(5),³² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and in general to protect investors 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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Exchange Act,³³ and the rules and regulations thereunder applicable to a national securities exchange.³⁴ Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act.³⁵ The Commission believes that the Exchange's proposal to list and trade FITRs will provide investors with a convenient way of participating in the investment grade government debt securities.³⁶ The Exchange's proposal

should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of fixed income securities. The Commission believes that the availability of the FITRs will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each FITRs will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will 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.³⁷

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the Index Fund Shares (*i.e.*, U.S. Government securities and investment grade government debt securities), the pricing information should be available. The Exchange has indicated that the underlying indexes are widely disseminated by various media such as Bloomberg, Reuters, Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Barrons, the *New York Times*, Grants Interest Rate Observer, and Bondweek. In addition, the Ryan indexes are published daily on two Ryan websites.³⁸

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of

sources. The electronic trade and quote systems of the dealers and inter-dealer brokers are one such source. Groups of dealers and inter-dealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline, Telerate, and CQG.³⁹

The Commission has also granted the issuer, ETF Advisors Trust, exemptive relief from section 24(d) of the 1940 Act⁴⁰ so that dealers may effect secondary market transaction in Barclays ETF shares without delivery of a prospectus to the purchaser. Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares. The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Index Fund Shares from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Index Fund Shares, in addition to details on the composition of the fixed income indices upon which they are based and how each Index Fund Shares would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.⁴¹ The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Index Fund Shares, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the

³⁰ Telephone conversation between Michael Cavalier, Associate General Counsel, American Stock Exchange and Florence Harmon, Senior Special Counsel, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on October 28, 2002.

³¹ 15 U.S.C. 78f.

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78f.

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ *Id.*

³⁶ In approving this proposal, the Commission has considered the proposed rule's impact on

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁷ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

³⁸ See note 14, *supra*.

³⁹ The Commission notes that the underlying index value is not disseminated every 15 seconds in contrast to the IDPV and notes that this is predicated on the income components in this product.

⁴⁰ 15 U.S.C. 80a-24(d).

⁴¹ Amex Rule 411.

Commission finds that the proposal to trade the Index Fund Shares is consistent with Section 6(b)(5) of the Exchange Act.⁴²

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the FITRs.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including FITRs. Index Fund Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;⁴³ Office Rules, such as conduct of accounts, margin rules, and advertising;⁴⁴ and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.⁴⁵ The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the FITRs.

The Commission believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the FITRs, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

The Exchange requests that the proposed rule change be approved on an accelerated basis pursuant to section

19(b) of the Exchange Act.⁴⁶ The Exchange believes there is good cause to grant accelerated approval insofar as the 1940 Act Application relating to the FITRs has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.⁴⁷ No comments were submitted and the Commission granted the relief requested in the Application.⁴⁸ The FITRs will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission, including Index Fund Shares based on an index of fixed income securities.⁴⁹ The proposed rule change presents no novel issues with respect to trading of Index Fund Shares. The Exchange anticipates that FITRs will be in a position to begin trading on the Exchange prior to the 30–35 period for Commission action under section 19(b) of the Exchange Act⁵⁰ and accelerated approval will permit Exchange trading to begin within the time frame established by the Trust. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.⁵¹

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 Exchange 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 the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–2001–32 and should be submitted by November 27, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,⁵² that the proposed rule change (File No. SR–Amex–2001–32), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28187 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46743; File No. SR–CBOE–2002–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Increase Position and Exercise Limits for Options on the DIAMONDS Trust

October 30, 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 May 20, 2002, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 CBOE proposes to increase position and exercise limits for options on the DIAMONDS Trust (“DIA”) to 300,000 contracts on the same side of the market. The Exchange's reporting requirements for DIAMONDS Trust options will serve to identify options holdings and information concerning

⁴² 15 U.S.C. 78f(b)(f).

⁴³ Amex Rules 1–236.

⁴⁴ Amex Rules 300–590.

⁴⁵ Amex Rules 700–891.

⁴⁶ 15 U.S.C. 78s(b).

⁴⁷ See Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002).

⁴⁸ See Investment Company Act Release No. 25759 (September 27, 2002).

⁴⁹ See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002).

⁵⁰ 15 U.S.C. 78s(b).

⁵¹ 15 U.S.C. 78f.

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 17 CFR 200.3–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.