

**ADDRESSES:** The meeting location is the Jefferson Auditorium, Department of Agriculture, South Building, 14th and Independence Ave, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202-418-3442, [schaff@oceancommission.gov](mailto:schaff@oceancommission.gov).

**SUPPLEMENTARY INFORMATION:** This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106-256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing federal government agencies, international interests and historical perspectives, comments from the public, and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Tuesday, October 22, 2002 to the meeting Point of Contact. A public comment period is scheduled for Wednesday, October 30, 2002. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at <http://www.oceancommission.gov> prior to the meeting.

Dated: September 18, 2002.

**James D. Watkins,**

*Chairman, U.S. Commission on Ocean Policy.*  
[FR Doc. 02-24278 Filed 9-24-02; 8:45 am]

**BILLING CODE 6820-WM-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f-2(c), SEC File No. 270-35  
OMB Control No. 3235-0029

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension of Rule 17f-2(c).

Rule 17f-2(c) allows persons required to be fingerprinted pursuant to section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints

through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. Plans have been approved for the American, Boston, Chicago, New York, Pacific, and Philadelphia stock exchanges and for the National Association of Securities Dealers and the Chicago Board Options Exchange.

It is estimated that 85,000 registered broker-dealers submit approximately 275,000 fingerprint cards to exchanges or a registered security association on an annual basis. It is approximated that it should take 15 minutes to comply with Rule 17f-2(c). The total reporting burden is estimated to be 68,750 hours.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Submission of fingerprint plans under Rule 17f-2(c) is mandatory for self-regulatory organizations. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 18, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-24353 Filed 9-24-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25738 ; 812-12787]

### UBS Global Asset Management (US) Inc. and FRESCO Index Share Funds; Notice of Application

September 18, 2002.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 29a)(32), 5(a)(1), 22(d), 24(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain domestic or foreign equity securities indexes, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices on the New York Stock Exchange ("NYSE") or other national securities exchange; (c) dealers to sell shares of the series of the Trust to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares; and (e) under certain circumstances, certain series that consist of the component securities of foreign equity securities indexes to pay redemption proceeds more than seven days after the tender of shares of the series for redemption.

**APPLICANTS:** UBS Global Asset Management (US) Inc., (the "Adviser") and FRESCO Index Shares Funds (the "Trust").

**FILING DATES:** The application was filed on February 19, 2002, and amended on August 6, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request,

personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Applicants, 51 West 52nd Street, New York, NY 10019.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 942-0634, or Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

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

#### Applicants' representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Trust intends to offer eight series (each a "Fund," which term includes "Future Funds," "Domestic Funds," and "Foreign Funds," as defined below). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser to each Fund. The Adviser is also registered as a broker-dealer under the Securities Exchange act of 1934 ("Exchange Act") and will serve as principal underwriter and distributor for the Funds. The Adviser may in the future retain one or more sub-advisers for managing one or more of the Funds for which it will act as the investment adviser.

2. Each Fund will invest in a portfolio of equity securities ("Portfolio Securities") generally consisting of the component securities of a specified domestic equity securities index ("Domestic Index") or foreign equity securities index ("Foreign Index," together with Domestic Indexes, the "Underlying Indexes").<sup>1</sup> There are eight

initial Funds, six based on Domestic Indexes (together with Future Funds based on Domestic Indexes, the "Domestic Funds")<sup>2</sup> and two based on Foreign Indexes (together with Future Funds based on Foreign Indexes, the "Foreign Funds").<sup>3</sup> In the future, applicants may offer additional Funds based on either Domestic or Foreign Indexes ("Future Funds"). Any Future Fund will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the investment adviser, any sub-adviser to a Fund, the principal underwriter of a Fund, or a promoter of a Fund.

3. The investment objective of each Fund will be to provide investment results that generally correspond, before fees and expenses, to the total return of the relevant Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund may not hold all of the underlying securities that comprise an Underlying Index in certain instances. When a potential component security is illiquid or when there are substantial costs involved in matching an Underlying Index with hundreds of component securities, a Fund may hold a representative sample of the component securities of the Underlying Index using a technique known as "portfolio optimization."<sup>4</sup> Applicants anticipate that a Fund that utilizes the portfolio optimization technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Underlying Index with the same weighting as the Underlying Index.

Underlying Index but which the Adviser believes will help the Fund track the Underlying Index.

<sup>2</sup> Morningstar US Large Cap Growth Index, Morningstar US Large Cap Value Fund Index, Morningstar US Mid Cap Growth Index, Morningstar US Mid Cap Value Index, Morningstar US Small Cap Growth Index, Morningstar US Small Cap Value Index are the Underlying Indexes for the initial Domestic Funds.

<sup>3</sup> Dow Jones STOXX 50 and Dow Jones EURO Stoxx 50 are the Underlying Indexes for the initial Foreign Funds.

<sup>4</sup> The Adviser will consider each component security in an Underlying Index for inclusion in a Fund based on the security's contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of an Index Fund so that, in the aggregate, its capitalization, industry, and fundamental investment characteristics perform like those in the Underlying Index.

Applicants state that over time the Adviser will be able to employ the portfolio optimization technique so that the expected tracking error of a Fund relative to the performance of its Underlying Index will be less than 5 percent.

4. Shares of the Funds ("Shares") will be issued in aggregations of at least 50,000 Shares ("Creation Units"). The price of a Creation Unit will be approximately \$335,000 to \$1,333,000 (based on the values of the Underlying Indexes as of August 1, 2002). Creation Units may be purchased only by or through a party that has entered into an agreement with the Adviser regarding creations and redemptions of Creation Units (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC") system. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a "Fund Deposit" consisting of: (a) A portfolio of securities that has been selected by the Adviser to correspond to the returns on the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit ("Cash Component").<sup>5</sup> An investor purchasing a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the

<sup>5</sup> On each business day, prior to the opening of trading on the Stock Exchange (as defined below), the custodian for each Fund will make available a list of the names and the required number of shares of each Deposit Security required for the Fund Deposit for each Fund. That Fund Deposit will apply to all purchases of Creation Units until a new Fund Deposit for a Fund is announced. The custodian also makes available the previous day's Cash Component, as well as the estimated Cash Component for the current day. Each Fund may permit or require the substitution of an amount of cash in lieu of depositing some or all of the Deposit Securities in certain circumstances. The Stock Exchange will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing on a per share basis the sum of the current value of the Deposit Securities and the estimated Cash Component.

<sup>1</sup> A Fund will invest at least 90% of its assets in the component securities of its Underlying Index. A Fund may invest up to 10% of its assets in securities, options and futures not included in the

Creation Units.<sup>6</sup> Each Fund will disclose the Transaction Fees charged by the Fund in its prospectus and the method of calculating the Transaction Fees in its statement of additional information ("SAI").

5. Orders to purchase Creation Units of a Fund will be placed with the Adviser, in its role as principal underwriter and distributor to the Trust. The Adviser will issue, and maintain records of, confirmations of acceptance to purchasers of Creation Units and will also be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on the NYSE or other U.S. national securities exchange, as defined in section 2(a)(26) of the Act (each, including NYSE, a "Stock Exchange") and traded in the secondary market in the same manner as other equity securities. A Stock Exchange specialist will be assigned to make a market in Shares. The price of Shares traded on a Stock Exchange will be based on a current bid/offer market. Each Share is currently expected to have a market value of between \$6.70 and \$26.66. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Stock Exchange specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.<sup>7</sup> Applicants expect that the price at which the Shares trade will be discipline by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

8. Shares will not be individually redeemable. Shares will only be

redeemable in Creation Units through a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive a portfolio of securities ("Fund Securities") plus a "Cash Redemption Amount." The Cash Redemption Amount is cash in an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit. An investor may receive the cash equivalent of a Fund Security upon its request if, for example, the investor were constrained from effecting transactions in the Fund Security by regulation or policy, or with certain Foreign Funds, if it is not possible to effect transactions in-kind in an applicable jurisdiction.<sup>8</sup>

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

10. Applicants state that neither the Trust nor any Fund will be marketed or otherwise held out as a "mutual fund." Rather, applicants state that each Fund will be marketed as an "exchange-traded fund." No Fund marketing materials (other than as required in the prospectus) will refer to a Fund as an "open-end" or "mutual fund," except to contrast a Fund with a conventional open-end management investment company. In all marketing materials where the method of obtaining, buying, or selling Shares is described, applicants will include a statement to the effect that Shares are not redeemable through a Fund except in Creation Units. The same type of disclosure will be provided in each Fund's prospectus, SAI, advertising materials, and all reports to shareholders. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

## Applicant's Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exception from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

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

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

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market prices of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

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

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

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

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

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

prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

#### Section 24(d) of the Act

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

prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>9</sup>

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

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be exchange-listed, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Trust's website includes quantitative information updated on a daily basis, including, for each, Fund, daily trading volume, the previous business day's NAV and the reported closing price. The website will also include, for each Fund, a calculation of the premium or discount of the midpoint of the bid-ask spread at the time of calculation of the NAV (the "Bid/Ask Price") against NAV, and data in chart format displaying the frequency distribution of discounts and premiums

<sup>9</sup> Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in a Fund's prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Adviser, breaks them down into the constituent Shares, and sells Shares directly to its customers, or if it chooses to couple the purchase of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. A Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. A Fund's prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.<sup>10</sup> The Trust's website also contains information with respect to the portfolio securities of each Fund, including their names, numbers of shares held by the Fund and the percentages of the Fund's portfolio, and reported closing prices of such securities.

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

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

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that because the definition of "affiliated person" includes any person owning 5% or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Fund so long as fewer than twenty Creation Units are in existence, and any purchaser that owns 25% or more of a Fund's outstanding Shares will be affiliated with a Fund. Applicants request an exemption from section 17(a) under section 6(c) and 17(b), to permit persons that are affiliated persons of the Funds solely by virtue of a 5% or 25% ownership interest (or affiliated persons of such affiliated persons that are not otherwise affiliated with the Funds) to purchase and redeem Creation Units through "in-kind" transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the

<sup>10</sup> The Bid/Ask Price per Share of a Fund is determined using the highest bid and the lowest offer on the Stock Exchange at the time of calculation of such Fund's NAV.

consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The composition of a Fund Deposit made by a purchaser or the Fund Securities and Cash Redemption Amount given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in-kind" purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its Shares. Applicants also believe that "in-kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

#### Section 22(e) of the Act

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

future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described herein exist.

14. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants believe that the Foreign Funds will be able to comply with the delivery requirements of section 22(e), except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

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

#### Applicants' Conditions

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

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

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

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Stock Exchange.

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

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

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

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

<sup>11</sup> Specifically, applicants request that both the Fresco Dow Jones STOXX 50 Fund and the Fresco Dow Jones Euro Stoxx 50 Fund be permitted to make redemption payments up to 10 calendar days after the tender of a Creation Unit for redemption.

<sup>12</sup> Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-24291 Filed 9-24-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46507; File No. SR-CBOE-2002-54]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Allow the Listing of Options on Exchange Traded Funds at \$1 Strike Price Intervals

September 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 12, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to list options at \$1 strike price intervals on securities ("Units") that represent interests in registered investment companies (or series thereof) organized as open-ended management investment companies, unit investment trusts, or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association, and that meet all criteria of Interpretation and Policy .06 to CBOE Rule 5.3., commonly referred to as "Exchange Traded Funds" or "ETFs." The text of the proposed rule change appears below. New text is in italics.

#### CBOE Rule 5.5: Series of Option Contracts Open for Trading

(a)-(c) No Change.

\* \* \* Interpretations and Policies

.01-.07 No change.

.08 *Notwithstanding Interpretation and Policy .01 above, and except for*

*options on Units covered under Interpretation and Policies .06 and .07 above, the interval between strike prices of series of options on Units, as defined under Interpretation and Policy .06 to Rule 5.3, will be \$1 or greater where the strike price is \$200 or less.*

#### 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

CBOE proposes to amend CBOE Rule 5.5 by adding Interpretation and Policy .08, which would provide for \$1 strike price intervals for options traded on ETFs. Additionally, the interval of strike prices for options on ETFs can be \$1 only where the strike price is at \$200 or less.

CBOE contends that this proposed amendment is consistent with the strike price intervals established for options on ETFs on the American Stock Exchange LLC ("Amex"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and the International Securities Exchange, Inc. ("ISE").<sup>3</sup> Furthermore, the CBOE currently trades options on certain ETFs at \$1 strike price intervals.<sup>4</sup> Specifically, that proposed rule change allowed for \$1 strike price intervals for options on Nasdaq-100 Index ETFs ("QQQ") and was based on similar Amex rules relating to strike price intervals for options on ETFs.

<sup>3</sup> See Securities Exchange Act Release Nos. 40157 (July 1, 1998), 63 FR 37426 (Amex approval order); 44037 (March 2, 2001), 66 FR 14613 (March 13, 2001) (ISE approval order); and 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (Phlx). Although the Phlx proposal granted \$1 strike price intervals for trading on the general term "ETFs," CBOE believes that it would be more accurate, under CBOE rules, to clarify the specific definition of an ETF by granting the \$1 strike price intervals to those Units provided for under Interpretation and Policy .06 to CBOE Rule 5.3.

<sup>4</sup> See Securities Exchange Act Release No. 44147 (April 3, 2001), 66 FR 18676 (April 10, 2001).

Lastly, CBOE affirms that it has the necessary systems capacity to support any additional series of options that may be added pursuant to the proposed rule change. Further, CBOE has been advised by Options Price Reporting Authority ("OPRA") that it has the capacity to support any additional series of options that may be added pursuant to the proposed rule change.<sup>5</sup>

###### (2) Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts 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 not necessary or appropriate in furtherance of the purposes of the Act.

##### 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4<sup>9</sup> thereunder because the Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

<sup>5</sup> See letter from Joseph P. Corrigan, Executive Director, OPRA, to William Speth, Director of Research, CBOE, dated September 11, 2002.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.