

Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would revise device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service, and eliminate OPRA's "Back-up Facility Access Fee." The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to make modest increases in device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service. Specifically, OPRA proposes to increase by amounts ranging from 7.39% to 8.11% the device-based information fee payable to OPRA by professional subscribers to OPRA's Basic Service, and to increase by 7.5% the Enterprise Rate fee that these same subscribers may elect to pay as an alternative to the device-based fee. OPRA's Basic Service consists of market data and related information pertaining to equity and index options ("OPRA Data").³ Professional subscribers are persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. OPRA's Enterprise Rate is based on the number of a professional subscriber's U.S. registered representatives and independent investment advisers who contract with the subscriber to provide advisory services to the subscriber's customers. Professional subscriber device-based fees charged to members will continue to be discounted by two percent for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system.

OPRA estimates that the overall effect of the proposed increases in Basic Service professional subscriber fees will be to increase revenues derived from these fees by approximately 7.5%.

The proposed increases in the device-based professional subscriber fees and in the Enterprise Rate fee are intended to generate additional revenues for OPRA that are needed to cover actual and anticipated increases in the costs of collecting, consolidating, processing and disseminating options market. These increases reflect the costs of continuing enhancements to and upgrades of the OPRA system to enable it to handle a greater volume of market

information as a result of the continuing expansion of listed options trading, and to support OPRA's proposed new "best bid and offer" service planned for early 2003.

OPRA also proposes to eliminate its "Back-up Facility Access Fee," in order to eliminate any possible impact this fee may have on discouraging OPRA's subscribers from establishing prudent back-up facilities.⁴ Devices used solely as part of a back-up facility will no longer be subject to fees imposed by OPRA unless and until they are actually used in support of a professional subscriber's operations, in which event regular professional subscriber device charges will apply for each month in which such devices are so used.

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2 under the Act,⁵ OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2) under the Act,⁶ if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. In order to give persons subject to these fees advance notice of the changes, OPRA proposes to put them into effect beginning January 1, 2003.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed

OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2002-04 and should be submitted by November 14, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46683; File No. SR-CBOE-2002-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of the 100 Spoke RAES Wheel

October 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on May 24, 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 CBOE. On July 17, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ On September 26, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit

⁷ 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Nancy L. Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2002 ("Amendment No. 1"). Amendment No. 1 is described in Section II.A., below.

⁴ See Letter from Madge M. Hamilton, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002 ("Amendment No. 2"). Amendment No. 2 is described in Section II.A., below.

³ At this time, no changes are proposed to be made to fees charged for access to information pertaining to foreign currency options ("FCO") provided through OPRA's FCO Service.

⁴ The Back-up Facility Access Fee does not apply to OPRA's FCO Service.

⁵ 17 CFR 240.11Aa3-2(c)(3)(i).

⁶ 17 CFR 240.11Aa3-2(c)(2).

comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend its rules to eliminate the pilot program and make permanent the 100 Spoke RAES Wheel System. The CBOE further proposes to modify the calculation of the participation distribution for market makers participating on the 100 Spoke RAES Wheel by eliminating the "vacation penalty."

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in brackets.

Chapter VI Doing Business on the Exchange Floor

Section A: General

RULE 6.8

* * * * *

*** * * Interpretations and Policies**

.01-.05 No change.

.06(a)-(b) No change.

(c) Under the "100 spoke RAES Wheel," [for a pilot period ending November 28, 2002,] RAES orders would be assigned to logged-in market makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contract) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of *10 trading days, [two weeks] within the previous 30 calendar days. The trading days within the review period may be for non-consecutive trading days.* The percentage distribution *will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day [determined during a review period will be effective for the succeeding review period].* On each revolution of the RAES wheel, subject to the exceptions described below, each participating market maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate his percentage of contracts on RAES that he traded in-person in that class during the review period. [The review period will most likely be for an expiration cycle with the percentage distribution to be effective for the succeeding calendar month.] A participation percentage will be calculated for each market-maker for each class that the market-maker trades.

For this purpose all DPM Designees of the same DPM unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of "spokes" and "wedges." A "spoke" is 1% of the RAES wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market-maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES wheel. For example, if a spoke equals one contract then there will be 100 spokes that will be assigned to market-makers on every revolution of the RAES wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A "wedge" is the maximum number of spokes that a market-maker may be consecutively assigned at any one time on the RAES wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes.

The appropriate Floor Procedure Committee will notify the membership of each class of options that is subject to the "100 Spoke RAES Wheel".

(d) No change.

.07-.09 No change.

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

In its filing with the Commission, CBOE 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 CBOE 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

a. The Initial Proposal

On May 25, 2000, the Commission approved, on a pilot basis, the Exchange's proposal to amend Rule 6.8 to provide the appropriate Floor Procedure Committee ("FPC") with a third choice for apportioning RAES trades among participating market-makers, the 100 Spoke RAES Wheel.⁵ In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The pilot program has been extended five times, most recently until November 28, 2002.⁶

Under the 100 Spoke RAES Wheel, RAES orders are assigned to market-makers according to the percentage of their in-person agency contracts (excluding RAES contracts) traded in that class compared to the in-person agency contracts (excluding RAES contracts) of all of the market-makers traded during the review period. Agency

⁵ Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000). RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

⁶ Securities Exchange Act Release No. 46644 (October 10, 2002) (pilot program extended until November 28, 2002) (SR-CBOE-2002-60); Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (pilot program extended until September 28, 2002) (SR-CBOE-2002-34); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (pilot program extended until June 28, 2002) (SR-CBOE-2001-68); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (pilot program extended until December 28, 2001) (SR-CBOE-2001-47); Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (pilot program extended until August 28, 2001) (SR-CBOE-01-07).

contracts are any contracts represented by an agent (booked orders and orders represented by brokers) and do not include contracts traded between market-makers in person in the trading crowd. A particular market-maker's entitlement will change based upon the percentage of agency contracts that market-maker traded in the review period. For example, if a particular market-maker traded 10% of all the in-person agency contracts (excluding RAES contracts) of class ABC for a particular review period, then that market-maker would be assigned 10% of the RAES contracts during the next trading period. The review period is determined by the appropriate FPC.

The RAES Wheel can be envisioned as having a number of spokes, each generally representing one percent of the total participation of all market-makers in the class. Thus, a market-maker will generally be assigned one spoke for each one percent of his or her market-maker participation during the review period. If the spoke size is one and all market-makers who traded in-person agency contracts in that option class during the review period are logged onto RAES, and no other market-makers are logged on, the RAES Wheel would consist of 100 spokes, representing 100 percent of all market-maker activity during the review period. The appropriate FPC may establish a larger spoke size. Setting the spoke size to five contracts, for example, would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. A larger Wheel would mean the Wheel would not revolve as quickly through the logged on market-makers, but a larger Wheel would not change the participation percentage of the individual market-makers.

A wedge is the maximum number of spokes that may be consecutively assigned at any one time to a market-maker during a rotation of the RAES Wheel. The purpose of the wedge is to break up the distribution of contracts into smaller groupings to reduce the exposure of any one market-maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market-maker may be entitled based on his or her participation percentage, then that market-maker would receive one or more additional assignments during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market-maker's participation percentage is 15 percent (15 percent of 100 spokes) and the wedge size is ten, that market-maker first would be assigned ten contracts on the RAES Wheel and then five contracts

at a different place on the RAES during the same revolution of the RAES Wheel. The wedge size is variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

The Exchange represents that the 100 Spoke RAES Wheel has worked as anticipated by providing an efficient and effective alternative allocation method for assigning RAES trades. The Exchange further represents that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades is essentially identical to the distribution of in-person agency market-maker trades on non-RAES trades in that class during the relevant review period. Therefore, CBOE requests permanent approval of the 100 Spoke RAES Wheel.

b. Amendment No. 1

In Amendment No. 1, CBOE clarified the calculation of the participation distribution for market-makers participating on the 100 Spoke RAES Wheel. Specifically, Amendment No. 1 modified Interpretation .06(c) of Rule 6.8 to adjust the applicable review period to account for vacations by market-makers. CBOE indicated that without this revision, if a market-maker takes even a single trading day off over the two-week review period, the market-maker is allocated a number of spokes that is less than the market-maker's average daily percentage of the trading volume, resulting in a "vacation penalty." Thus, in Amendment No. 1, CBOE amended the rule text to specify that rather than "two weeks" (as previously specified) the operative review period will be the prior "10 trading days," *i.e.*, last ten days in which the market-maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). The Amendment further specified that the trading days within the review period may be non-consecutive trading days, and that the percentage distribution "will be calculated at the conclusion of each trading day and will be applied to the 100 Spoke RAES Wheel distribution on the following trading day".

c. Amendment No. 2

CBOE filed Amendment No. 2 in order to clarify various items discussed in the narrative portion of the original filing and Amendment No. 1. Although Amendment No. 2 did not propose changes to the proposed rule text (as amended by Amendment No. 1), it did

provide further explanation of the following items.

First, CBOE explained that, in calculating the review period, the 10 trading days used to compute one market-maker's RAES participation distribution may be a different 10 trading days than another market-maker signed onto RAES in the same trading crowd, and that the 10-day review periods may overlap. In addition, CBOE clarified that the individual market-makers have no discretion over which 10 trading days will be used in the calculation. The proposed rule change permits the appropriate FPC to set a review period not to exceed 10 trading days. Once the appropriate FPC has set the number of days to be used in the calculation of the market-maker's participation distribution, the Exchange looks back that number of trading days to calculate each market-maker's participation right.

Second, CBOE reiterated that, under the proposed rule, the Exchange will conduct the calculation for the market-maker participation distribution at the conclusion of each trading day and apply the market-makers' RAES participation distribution to the following trading day. CBOE further explained that, since the calculation of the participation distribution is done at the end of each trading day, the 10-day review period for each market-maker will be done on a rolling basis, *i.e.*, each time the calculation is conducted the non-RAES agency trading volume for the current day, if any, is added to the 10-day review period, and the non-RAES agency trading volume for the oldest day used for the previous day's calculation is deleted. According to CBOE, this calculation encourages market-makers to actively trade every day, since each day's trading activity will have an effect on the market-maker's RAES participation distribution for the next trading day.

Third, CBOE corrected the formula for determining market-maker participation percentage on the 100 Spoke RAES Wheel, which had been stated incorrectly in Amendment No. 1 (the numerator and denominator were inadvertently reversed). In Amendment No. 2, CBOE clarified that in order to obtain a market-maker's participation percentage, the "non-RAES agency trading volume" for a given market-maker is divided by the "total volume," *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period). CBOE provided the

following example: Market-Maker A traded every day for three weeks, then in week four did not trade on Monday or Tuesday, but traded the rest of the week, and the appropriate FPC set the review period at ten non-consecutive trading days. CBOE would calculate Market-Maker A's participation percentage by looking at the last ten days out of the last 30 calendar days that Market-Maker A traded. Thus, the Exchange would count Wednesday, Thursday, and Friday in week four, all five trading days of week three and Thursday and Friday of week two to compute the ten-day review period for Market-Maker A. The Exchange then would sum the volume of the non-RAES agency trades for Market-Maker A in order to calculate Market-Maker A's ten-day non-RAES agency trading volume. The Exchange then would sum the volume of the non-RAES agency trades for all traders in a particular options class to obtain the total non-RAES agency trading volume ("total volume").⁷ The non-RAES agency trading volume for Market-Maker A would then be divided by the total volume to obtain Market-Maker's A's participation percentage on the 100 Spoke RAES Wheel. This calculation would eliminate the "vacation penalty" and provide greater incentive for market-makers to participate on the 100 Spoke RAES Wheel.

To further explain its proposal, in Amendment No. 2 CBOE included the following specific example showing how market makers' review periods and participation percentages on the 100 Spoke RAES Wheel would be calculated.

For example, the trading pit for XYZ option consists of Market-Makers A, B, C, D and E. Market-Maker A took the week of January 21, 2002, off for vacation. January 21, 2002, was a holiday and the Exchange was closed for trading. After the close on Friday, January 25, 2002, the Exchange calculates the participation percentage for Monday, January 28, 2002. The Exchange would calculate the non-RAES agency trading volume for each market-maker during each market-maker's 10-day review period. Market-Maker A had total non-RAES agency trading volume of 20,000 contracts for trading on January 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18. Market-Maker B had total non-RAES agency trading volume of 20,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24

and 25. Market-Maker C had total non-RAES agency trading volume of 10,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker D had total non-RAES agency trading volume of 20,000 for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. Market-Maker E had total non-RAES agency trading volume of 30,000 contracts for trading on January 11, 14, 15, 16, 17, 18, 22, 23, 24 and 25. The Exchange would add the total non-RAES agency trading volume for Market-Makers A, B, C, D and E to get a total volume of 100,000 contracts. Each market-maker's total non-RAES agency trading volume would be divided by 100,000 contracts. Therefore, on Monday, January 28, 2002, Market-Maker A would have a RAES participation distribution of 20 percent, Market-Maker B would have a RAES participation distribution of 20 percent; Market-Maker C would have a RAES participation distribution of 10 percent, Market-Maker D would have a RAES participation distribution of 20 percent and Market-maker E would have a RAES participation distribution of 30 percent.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, will continue to be consistent with the requirements of section 6(b)(5) of the Act.⁸ Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁹ The Exchange represents that, as anticipated, the 100 Spoke RAES Wheel has rewarded those market-makers who are most active in providing the services that a market-maker is expected to perform, *i.e.*, providing liquidity to agency business in the assigned product. The Exchange represents that this has enhanced the ability of the Exchange to provide instantaneous, automatic execution of RAES-eligible orders at the best available prices. In addition, the Exchange believes that the proposed rule change, as amended, promotes just and equitable principles of trade by eliminating the "vacation penalty." The Exchange further believes that the proposed rule change, as amended, protects investors and is in the public

interest by creating an incentive for more market-makers to participate on the 100 Spoke RAES Wheel, which provides more liquidity for the automatic execution of orders.

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

The Exchange represents that the proposed rule change, as amended, does not impose any burden on competition that is 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, as amended.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

⁷ The Exchange noted that the total volume is not based on a specific two-week calendar period, but instead is calculated by adding together the trading volume for each market-maker and DPM during his or her relevant 10-day review period.

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

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

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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

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

October 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade, under Section 703.16 of the Listed Company Manual (the "LCM") and the Exchange's Rule 1100 *et seq.*, shares of the Fresco Dow Jones STOXX 50 Fund and Fresco Dow Jones EURO STOXX 50 Fund (each, a "Fund" and together, the "Funds"). The Funds are each a separate series of Fresco Index Shares Funds (the "Trust")³ UBS Global Asset Management (US) Inc. ("UBS Global AM"), an indirect wholly owned asset

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

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

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

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

1. Purpose

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

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

Indexes⁵

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

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

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

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

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

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

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

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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