

facility for the pledge or segregation of securities, and other services related to the immobilization of securities certificates.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all written comments will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. All submissions should refer to the File No. 600-25 and should be submitted by April 3, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36923; International Series Release No. 946; File No. SR-NYSE-95-23]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to a Proposed Rule Change Relating to the Listing of Investment Company Units

March 5, 1996.

I. Introduction

On June 7, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt ¶ 703.16 of its Listed Company Manual ("Manual") and to amend Exchange Rule 460. The proposed rule change was published for comment and appeared in the Federal Register on August 8, 1995.³ On January 24, 1996, the NYSE filed Amendment No. 1 to its proposal.⁴ On

February 23, 1996, the NYSE filed Amendment No. 2 to its proposal.⁵ No comments were received by the Commission. This order approves the proposal, as amended.

II. Description of the Proposal

A. Introduction

The NYSE proposes to adopt ¶ 703.16 of its Listed Company Manual ("Manual"), consisting of listing standards for units of trading ("Units" or "Fund shares") that represent an interest in a registered investment company ("Investment Company") that would be organized either as an open-end management investment company ("Fund-only structure"), or as a unit investment trust ("Fund/UIT structure"). The Investment Company would hold directly securities comprising, or otherwise based on or representing an investment in, an index or portfolio of securities ("Fund Basket"). The Investment Company either could hold the securities directly, or could hold another security representing the index or portfolio securities (such as a UIT that holds shares of an open-end investment company). The Exchange also proposes to amend Exchange Rule 460 to permit specialists to whom Units have been allocated to purchase and redeem Units through a distributor from the issuer of such securities.

The Exchange initially seeks to list up to nine series of Units, in the form of "CountryBaskets."⁶ These CountryBaskets (or "CBs") will be based on the Fund-only structure.⁷ Hence, the CBs will be structured as a series of an open-end management investment company investing directly in a portfolio of securities ("Index Securities") included in the corresponding Financial Times/Standard & Poor's Actuaries World

an open-end management investment company. Finally, Amendment No. 1 updates information that was provided in the original proposal. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated January 23, 1996 ("Amendment No. 1").

⁵ In Amendment No. 2, the Exchange makes two technical changes to the language it proposes to add to its Rule 460 concerning specialist activities. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinkas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated February 23, 1996 ("Amendment No. 2").

⁶ "The CountryBaskets Index Fund" and "CountryBaskets" are service marks of Deutsche Morgan Grenfell/C.J. Lawrence Inc. ("DMG"), the investment advisor to the Investment Company. DMG has filed applications for registration of such service marks with the U.S. Patent and Trademark Office. *Id.*

⁷ *Id.*

Index ("FT/S&P Index", "FT/S&P", or "Index").⁸ The nine series of Funds will be based on the following FT/S&P Indices: Australia; France; Germany; Hong Kong; Italy; Japan; South Africa; United Kingdom; and the United States.⁹ If, in the future, the Exchange seeks to list Units with respect to other indices, including FT/S&P Indices not described herein, it must make an appropriate filing with the Commission to provide the authorization to effect such listings.¹⁰

Each CountryBasket series represents an interest in an open-end management investment company (each a "Fund"),¹¹ and is designed to provide investment results that substantially correspond to the price and yield performance of the specific FT/S&P Index to which it relates. Specifically, each series will invest the largest proportion of its net assets practicable, and in any event at least 95% of its net assets, in the securities of the corresponding FT/S&P Index, and the weighting of the portfolio securities of each series will substantially correspond to their proportional representation in the relevant FT/S&P Index.

B. The FT/S&P Indices

Deutsche Bank Securities Corporation (CountryBaskets advisor and DMG's predecessor firm), provided the Exchange with the following description of the FT/S&P Indices:¹²

1. Establishing an Index

The FT/S&P Indices are compiled jointly by The Financial Times Limited ("FT"), Goldman, Sachs & Co.

⁸ Although the CBs will rely on the Fund-only structure, the Exchange represents that reliance on a Fund/UIT structure would not materially alter its proposal.

⁹ The actual components, component capitalization, and component weightings for each series as of December 29, 1995, were submitted as part of a Form N-1A registration statement of The CountryBaskets Index Fund, Inc. under the Securities Act of 1933 and the Investment Company Act of 1940. Registration Nos. 33-85710; 811-8734.

¹⁰ Before the NYSE could trade Units based on indices other than the nine indices noted above, it would have to file a rule proposal pursuant to Section 19(b) and Rule 19(b)(4) thereunder. This filing would be in addition to any other regulatory requirements under the Investment Company Act of 1940 or the Securities Act of 1933.

¹¹ The product sponsors have obtained exemptive relief from the Commission with respect to issues arising under the Investment Company Act of 1940 permitting them to adopt the Fund-only structure. See Investment Company Act Release No. 21802; International Series Release No. 943, March 5, 1996. The Commission notes that the manner in which the Units would be listed and traded on the Exchange would be the same regardless of the structure chosen.

¹² The following description reflects organizational ownership and name changes that have occurred since the Exchange filed its original proposal. See Amendment No. 1, *supra* note 4.

⁷ 17 CFR 200.30-3(a)(50) (1995).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 36032 (July 28, 1995), 60 FR 40403.

⁴ In Amendment No. 1, the Exchange provides additional information regarding the calculation and dissemination of Index values and Index component changes. Amendment No. 1 also effects some minor changes relating to the size and value of the securities described in the original proposal. Amendment No. 1 specifies that the investment company described in its original proposal will be

("Goldman"), and S&P in conjunction with the Institute of Actuaries (together, the "Consortium").¹³ The aim of the Consortium is to create and maintain a series of high quality equity indices for use by the global investment community. Specifically, the Consortium seeks to establish and maintain each FT/S&P so that with respect to the market it is designed to reflect, the FT/S&P is comprehensive, consistent, flexible, accurate, investible, and representative.

The World Index Policy Committee ("WIPC") makes all policy decisions concerning the FT/S&P Indices, including: objectives; selection criteria; liquidity requirements; calculation methodologies; and the timing and disclosure of additions and deletions. The WIPC makes those decisions in a manner that is consistent with the stated aims and objectives of the Consortium. In general, the WIPC aims for a minimum of 70 percent coverage of the aggregate value of all domestic exchange-listed stocks in every country, region and sector in which it maintains an FT/S&P.¹⁴

The following criteria must be met for a market's securities to be eligible for inclusion in an FT/S&P Index: (1) direct equity investment by non-nationals must be permitted; (2) accurate and timely data must be available; (3) no significant exchange controls should exist that would prevent the timely repatriation of capital or dividends; (4) significant international investor interest in the local equity market must have been demonstrated; and (5) adequate liquidity must exist.

Securities in an FT/S&P are subject to the following "investibility screens": (1) securities comprising the bottom five percent of any market's capitalization are excluded; (2) securities must be eligible to be owned by foreign

investors; (3) 25 percent or more of the full capitalization of eligible securities must be publicly available for investment and not in the hands of a single party or parties "acting in concert"; and (4) securities that fail to trade for more than 15 business days within each of two consecutive quarters are excluded.

The WIPC seeks to select constituent stocks that capture 85 percent of the equity that remains available in any market (known as the "investible universe") after applying the investibility screens. Securities are selected with regard to economic sector and market capitalization to make the FT/S&P component highly representative of the overall economic sector make-up and market capitalization distribution of the investible universe of a market.

2. Maintaining an Index

The WIPC may add securities to an FT/S&P Index for any of the following reasons: (1) the addition would make the economic sector make-up and market capitalization distribution of the FT/S&P component more representative of its investible universe; (2) a non-constituent security has gained in importance and replaces an existing constituent security under the rules of review established by the WIPC; (3) the FT/S&P component represents less than its targeted percentage of the capitalization of its investible universe (usually in cases where the investible universe has grown faster than the corresponding FT/S&P component); (4) a new, eligible security becomes available whose total capitalization is one percent or more of the current capitalization of the relevant FT/S&P component; (5) an existing constituent "spins off" a part of its business and issues new equity to the existing shareholders; or (6) changes in investibility factors lead to a stock becoming eligible for inclusion and that stock now qualifies on other grounds.

The WIPC may adjust the composition of an FT/S&P for any of the following reasons: (1) the component comprises too high a percentage of its representative universe; (2) a review by the WIPC shows that a constituent security has declined in importance and should be replaced by a non-constituent security; (3) the deletion of a security that has declined in importance would make the FT/S&P component more representative of the economic make-up of its investible universe; (4) circumstances regarding investibility and free float change, causing the constituent security to fail the FT/S&P screening criteria; (5) an existing

constituent security is acquired by another entity; or (6) the stock has been suspended from trading for a period of more than ten working days. Generally, but not in all cases, changes resulting from review by the WIPC occur at the end of a calendar quarter. Changes resulting from merger or "spin-off" activity will be effectuated as soon as practicable.

3. Calculation and Dissemination of an Index

The FT/S&P Indices are calculated through widely accepted mathematical formulae, with the effect that the indices are weighted arithmetic averages of the price relatives of the constituents—as produced solely by changes in the marketplace—adjusted for intervening capital changes. The FT/S&P Indices are base-weighted aggregates of the initial market capitalization, the price of each issue being weighted by the number of shares outstanding, modified to reflect only those shares outstanding that are eligible to be owned by foreign investors.

For each constituent security, the implied annual dividend is divided by 260 (an accepted approximation for the number of business days in a calendar year). This dividend is then reinvested daily according to standard actuarial calculations. Distributions affect adjustments to the base capital or the price per share in accordance with prescribed FT/S&P standards. The Indices' values and related performance figures for various periods of time are calculated daily by FT/S&P and are disseminated to the public in the manner as described below.

The FT/S&P Indices are valued in terms of local currency, U.S. dollars, and U.K. pounds sterling, thereby allowing the effect of currency value on the Index value to be measured. The FT/S&P Indices are calculated once a day on weekdays when one or more of the constituent markets are open; and also are syndicated and published in the financial sections of several newspapers worldwide. FT/S&P Indices data also may be purchased electronically.

DMG has arranged for Telesphere Corporation (formerly Telekurs (North America) Inc.) ("Telesphere") to calculate "indicative values" for the nine Indices upon which CountryBaskets are based on a more frequent basis.¹⁵ The Exchange will

¹³ The Indices are successors to the FT-Actuaries World Indices, which were founded jointly by FT, Goldman, and NatWest Securities Limited. In May 1995, S&P joined FT and Goldman as co-publisher of the predecessor to the Indices. As part of the new agreement, NatWest withdrew from the management of those Indices. The Indices are owned jointly by FT, S&P and Goldman. Following a transition period, FT and S&P jointly will calculate the Indices. In November 1995, FT transferred its ownership rights in the Indices to FT-SE International, a new company owned jointly by FT and the London Stock Exchange. By the end of 1996, it is expected that FT-SE International will assume responsibility for calculating the European and Asia-Pacific Indices, and S&P will calculate the United States Index. *Id.*

¹⁴ The WIPC consists of: one representative of each Consortium member; one member nominated by each of the parties as representing an actual or prospective main user group of the World Indices; a Chairman and additional member who are members of the Institute of Actuaries or the Faculty of Actuaries.

¹⁵ See Amendment No. 1, *supra* note 4. "Indicative value" is a value calculated by Telesphere, and is not the official value for the Indices calculated by FT/S&P. This, however, is not meant to imply it is an estimate or not an accurate reflection of the value of the Indices. As noted

disseminate these indicative values in U.S. dollars through the facilities of the Consolidated Tape Association ("CTA"). In calculating indicative values, Telesphere will use the most currently-available stock price information for the constituent stocks in an Index (based on home currency prices) and disseminate the indicative values in prevailing U.S. dollars. Telesphere also will use the same pricing algorithm and methodology used by the FT/S&P calculators in calculating the indicative values. These values will be disseminated every 30 seconds during the regular NYSE trading hours of 9:30 a.m. to 4:00 p.m. Eastern time.¹⁶

Owning to the differences in trading hours in the markets for the stocks underlying the Indices, the calculation of the indicative values will be implemented as follows:

- *Pacific Rim.* Australia, Hong Kong, and Japan. There is no overlap between the NYSE trading hours and the home-country trading hours. Thus, the indicative values always will reflect the closing prices of the underlying securities on the most recently-completed trading day, but will be updated every 30 seconds to reflect changes in exchange rates.

- *Europe.* France, Germany, Italy, and the United Kingdom. There is some overlap between NYSE trading hours and home-country trading hours. Thus, the 30-second updates for these Indices will reflect changes in both current stock-price information and currency exchange rates while the relevant market is open; it will reflect only changes in exchange rates once the home-market closes.

- *United States.* Each 30-second update will reflect the current price of U.S. component stocks.

- *South Africa.* During Eastern Standard Time, there is no overlap between NYSE and South African trading hours. During Eastern Daylight Time, there is a half-hour overlap. Thus, during Standard Time, the disseminated Index values will reflect the closing South African prices. During Eastern Daylight Time, there will be a real-time feed of stock prices from the Johannesburg Stock Exchange allowing a real-time calculation of

below. Telesphere will use the same pricing algorithm and methodology as used by FT/S&P to calculate indicative values, as well as the most currently available stock prices. Therefore, the indicative value should be an accurate reflection of the value of the Indices. *Id.*

¹⁶ *Id.* While the indicative values will not be the official values of the Indices (which will continue to be calculated and disseminated once each day), the Exchange believes that these values will provide investors with accurate, timely information on the values of the Indices. While some market participants may be able to perform these calculations for their own trading purposes during the business day, many participants lack sufficient resources to do so. The Exchange believes that providing standardized information through CTA facilities will help to ensure that all investors have equal access to this market information. *Id.*

the indicative value of the Index at 30-second intervals during the half-hour overlap.¹⁷

The Exchange states that if Telesphere no longer were to calculate the indicative values of the Indices, DMG would seek to find another entity to provide such values on substantially the same basis as Telesphere. If this were to occur, the Exchange states that it will consult with Division of Market Regulation staff to ensure that the staff finds any proposed new arrangement acceptable. If the staff were to find the new arrangements unacceptable, the Exchange would take appropriate action to address the staff's concerns, including the possibility of delisting the securities.

Changes to an FT/S&P Index made during a calendar quarter are noted at the foot of the tables containing the Indices that are published daily in the *Financial Times* Newspaper ("FT newspaper") publication. Consistent with the FT newspaper's publication policy, these changes also are shown in the FT newspaper prior to the actual date of implementation (unless for reasons beyond the control of the FT newspaper this is not possible). Decisions regarding the addition of new eligible constituent stocks that are unrelated to existing stocks in an FT/S&P Index, or weighting changes to existing constituent stocks, are announced in the FT newspaper at least four working days before they are implemented. Monday editions of the FT newspaper also show all constituent changes made during the previous week, together with base values for each Index. Changes to be made in an Index at the end of a calendar quarter are published as soon as is practicable following the quarterly meeting of the WIPC, but before the quarter-end.

C. Creation and Redemption of the Securities

Consistent with the proposed listing standards. Units, including CBs, will be distributed in transactions with the Fund ("Creation Transactions"). As noted above, the NYSE proposal sets forth listing standards applicable to both a Fund-only structure and a Fund/UIT structure. The nine CB series the NYSE proposes to trade will rely on the Fund-only structure. To effect a Creation transaction using the Fund-only structure, a person buys Fund shares from the Fund at their net asset value ("NAV") next computed. The sales will be in "Creation Unit" size aggregations in exchange for a deposit ("Deposit") of Index Securities (a "Fund Basket") and a specified amount of cash sufficient to

equal the NAV of Fund shares.¹⁸ Creation Unit size holdings then can be disaggregate and sold separately or in lots on the Exchange.

Units must be combined into Creation Unit size aggregations in order to be redeemed at NAV, which generally will be satisfied with an in-kind distribution of Index Securities comprising the Fund shares, plus a cash payment. An individual Unit will not be redeemable. For the Australia, France, Germany, Hong Kong, Italy, South Africa, United Kingdom, United States CountryBasket series, there will be 100,000 CBs per Creation Unit. For the Japan series, there will be 250,000 CBs per Creation Unit. With the exception of the Japan series, a Creation Unit size aggregation of Fund shares will represent securities with approximately \$2 to \$5 million in market value. A Creation Unit size aggregation of Fund shares for the Japan series will have an approximate value of \$9.5 million.¹⁹

There may be an initial distribution period of Fund shares lasting from one to a few weeks during which the principal underwriter or distributor ("Distributor") directly or through soliciting dealers will accept subscriptions to purchase Fund shares.²⁰ Thereafter, Fund shares could be purchased throughout the life of the product. Therefore, the offering will be continuous.

¹⁸ *Id.* If the alternative Fund/UIT structure were used, a person would effect a Creation Transaction by buying a Fund share (or fractional share) in exchange for the Deposit. Each UIT would invest solely in shares of a specified series of the Fund and would offer one "redeemable unit of beneficial interest" (a "Redeemable Unit") in exchange for each Fund share or fractional share. The Redeemable Unit would be the functional equivalent of the Creation Unit in the Fund-only structure.

The owner of a Redeemable Unit could separate that unit into a specific number of identical fractional non-redeemable sub-units that would constitute the Units traded on the Exchange. These tradeable Units could be recombined into Redeemable Units and then redeemed, at NAV, for the appropriate number of Fund shares. In turn, the Fund shares could be redeemed for the Index Securities and cash. The tradeable Units would not be redeemable other than in Creation Unit aggregations.

¹⁹ *Id.* According to the Exchange, the large size of round lots in Japan, and the requirement that all purchases in that market be in round lots, required that a Creation Unit be structured so that the Fund Basket consists of round lots of each of the Index Securities, including the lowest-weighted securities, resulting in the large size of the Creation Unit. Otherwise, effective arbitrage between the Japan CountryBasket and the Index Securities might be impracticable. *Id.*

²⁰ If the alternate dual Fund/UIT structure were used, orders also would be accepted to exchange Fund shares for Redeemable Units and to separate such Units into tradeable Units.

¹⁷ *Id.*

D. Exchange Trading of Units

Units, including CBs, are deemed equity securities subject to NYSE rules applicable to the trading of equity securities. Before commencing trading in CBs, the Exchange will require that there be at least 300,000 tradeable Units outstanding, representing at least three Creation Units for each series, except for the Japan series.²¹ The Exchange will consider the suspension of trading and the delisting of a series of Units, including CBs, if:

- after the first year of trading, there are fewer than 50 record or beneficial holders of the Units for 30 or more consecutive trading days;
- the value of the underlying index or portfolio of securities is no longer calculated or available; or
- there occurs another event that makes further dealings in the Units on the Exchange inadvisable.²²

Dealing in Units on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules.²³ The Exchange's general dealings and settlements rules will apply.²⁴ Other Exchange equity rules and procedures, such as the Exchange's equity margin rules, would apply.²⁵ Unless the prospectus for a specific Investment Company states otherwise, the Units trading on the Exchange will have one vote per share; however, as with other securities issued by registered investment companies, there will not be a "pass-through" of the voting rights on the actual index securities held directly by a fund or indirectly by a trust.

While equity securities traded on the Exchange must be certificated, the Exchange proposes that Units trade either in certificated form or solely through the use of a global certificate. The use of a global certificate would

²¹ For the Japan series, 500,000 worth of CBs, representing two Creation Units, will be required to be outstanding prior to commencing trading.

²² The Commission notes that the requirements that the fund must invest at least 95% of its net assets in the securities of the appropriate Index and that the weighting of the portfolio securities of each series will substantially correspond to their proportional representation in each Index, helps to reduce concerns that the CBs could become a surrogate for trading in a single or a few unregistered stocks. In the unlikely event, however, that this were to occur, the Commission would expect the NYSE to delist the securities to ensure compliance with the Act.

²³ E.g., Rule 51—Hours for Business (9:30 a.m.—4:00 p.m.) and Rule 62—Variations (one-eighth variations).

²⁴ See NYSE Rules 45 to 296.

²⁵ With respect to margin, the Exchange is requesting that the Commission's Division of Market Regulation grant "no action" relief with respect to Section 11(d)(1) of the Act, as amended, and Rules 11d1-1 and 11d1-2 thereunder, with respect to the extension of credit to customers on a security that is part of a new issue.

have to be consistent with ¶ 501.02(B) of the Manual, which imposes conditions on the use of global certificates for bonds. Permitting the use of global certificates would be consistent with expediting the processing of transactions in Units and would minimize the costs of engaging in transactions in these securities.

E. Specialists

With respect to specialist dealings, Exchange Rule 460 precludes certain business relationships between an issuer and the specialist in the issuer's securities. This could be interpreted to prevent a specialist from entering into Creation Transactions or redeeming Units from the issuer. Therefore, the Exchange proposes to amend its Rule 460 to permit specialists to engage in these types of transactions if such transactions would facilitate the maintenance of a fair and orderly market in the Units. Any Creation Transactions in which the specialist engages, however, will have to be effected through the Distributor, and not directly with the issuer. The Exchange believes that this requirement will make clear that the specialist is purchasing Units in Creation Unit size aggregations only to facilitate normal specialist trading activity. Finally, the specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor, and only at NAV.

F. Disclosure

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended ("1933 Act"), all investors in Units, including CountryBaskets, will receive a prospectus. Because the Units will be continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in Units, including secondary market purchases on the NYSE in CBs. The prospectus and all marketing material will refer to CBs by using the term "investment company." The term "mutual fund" will not be used at any time. The term "open-end investment company" will be used in the prospectus only to the extent required by Item 4 of Investment Company Act Form N-1A. In addition, the cover page of the prospectus will include a distinct paragraph stating that CBs will not be individually redeemable.²⁶

Upon the initial listing of any class of Units, including CBs, the Exchange also will issue a circular to its membership

explaining the unique characteristics and risks of this type of security. That circular, among other things, will inform member organizations of their responsibilities under Exchange Rule 405 ("know your customer rule") with respect to transactions in such Units. The circular also will inform member organizations of their responsibility to deliver a prospectus to investors.

G. Trading Halts

Trading of Units would be halted, along with the trading of all other listed stocks, in the event the "circuit breaker" thresholds of Exchange Rule 80B were reached. In addition, the Exchange will consider halting the trading in any series of Units if necessary to maintain a fair and orderly market in that series of Units. For example, the Exchange would consider halting the trading in a series of Units if trading has been halted or suspended in the primary market for stocks representing a significant percentage (such as 20 percent) of the value of the underlying stock index or portfolio.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.²⁷ The Commission believes that the Exchange's proposal to list and trade Units, and specifically CB securities, will provide investors with a convenient way of participating in domestic and foreign securities markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell at negotiated prices throughout the business day securities that replicate the performance of several portfolios of stocks.²⁸ 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.²⁹

²⁷ 15 U.S.C. 78f(b)(5) (1988).

²⁸ The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Units only could redeem Units, including CBs, in Creation Unit size aggregations.

²⁹ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange

²⁶ See Form N-1A, *supra* note 9.

The estimated cost of an individual CB security, approximately \$20 to \$50, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign or domestic stocks. Moreover, the Commission believes that CBs will provide investors with several advantages over standard open-end investment companies specializing in such stocks. In particular, investors will be able to trade CBs continuously throughout the business day in secondary market transactions at negotiated prices.³⁰ In contrast, Investment Company Act Rule 22c-1³¹ limits holders and prospective holders of open-end investment company shares to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors. Accordingly, CBs should allow investors to: (1) respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not currently available to retail investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of CBs will be based on the value of the securities and cash held in the Fund, CBs are not leveraged instruments.³² In essence, CBs

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 function, 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.

³⁰ Because of potential arbitrage opportunities, the Commission believes that CBs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of CBs comparable to their net asset values; therefore, arbitrage activity likely will not be significant. In addition, the Fund will redeem in-kind, thereby enabling the Fund to invest virtually all of its assets in securities comprising the FT/S&P Indices.

³¹ 17 CFR 270.22c-1 (1994). Investment Company Act Rule 22c-1 generally provides that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of an open-end investment company generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted CBs an exemption from this provision to allow them to trade in the secondary market at negotiated prices. See Investment Company Act Release No. 21802; International Series Release No. 943, March 5, 1996.

³² In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer

are equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable FT/S&P Index. Accordingly, it is appropriate to regulate CBs in a manner similar to other equity securities. Nevertheless, the Commission believes that the unique nature of CBs raise certain product design, disclosure, trading, and other issues that must be addressed.

A. CountryBaskets Generally

The Commission believes that the proposed CBs are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the Index it is designed upon, and, in turn, the performance of the specified U.S. or foreign market. In this regard, the Commission notes that the WIPC imposes specific criteria in its selection of index countries and components. For a market to be eligible for inclusion in an FT/S&P Index, it must allow direct equity investment by non-nationals, make timely and accurate data available, impose no significant exchange controls, demonstrate significant international investment interest, and be sufficiently liquid. For a security to be included in a given index, it may not be in the bottom 5% of a market's capitalization, it must be eligible to be owned by foreigners, 25% of its full capitalization must be publicly available for investment, and it may not fail to trade for more than 15 business days within each of two consecutive quarters. The aim of component selection is to make Index components highly representative of the over-all economic sector make-up and market capitalization of a given market. The Commission believes that these criteria should serve to ensure that the underlying securities of these indices are well capitalized and actively traded.

The Commission also notes that the CB series' investment policies require that at least 95% of a CB series' investments be in the equity securities that are the constituent securities of the relevant FT/S&P Index. In addition, the weighting of the portfolio securities of each series will substantially correspond to their proportional representation in the corresponding FT/S&P Index.³³ This will help to ensure that an investment in CBs will be substantially similar to an investment in

suitability. See e.g., Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

³³ See Form N-1A, *supra* note 9.

the securities comprising the related FT/S&P Index.

B. Disclosure

The Commission believes that the NYSE proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Units, including CBs.³⁴ As noted above, all Unit investors, including investors in CBs, will receive a prospectus regarding the product. Because Units, including CBs, will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in the secondary market at the NYSE. The prospectus will address the special characteristics of a popular Unit, including a statement regarding that Unit's redeemability, and method of creation. With respect to CBs, the prospectus will state specifically that CBs individually are not redeemable.

The Commission also notes that upon the initial listing of any class of Units, including CBs, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note Exchange members' responsibilities under Exchange Rule 405 ("know your customer rule") regarding transactions in such Units. Exchange Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, every order, and every cash or margin account accepted or carried by members.³⁵ The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in Units, including CBs, including that they only are redeemable in Creation Unit size aggregations.

C. Trading of CBs

The Commission finds that adequate rules and procedures exist to govern the trading of Units, including CBs. In this regard, the Commission notes that Units are deemed equity securities subject to NYSE rules applicable to the trading of equity securities. Accordingly, the Exchange's existing general Dealings and Settlements Rules that currently

³⁴ The Exchange states that it may, in the future, seek to obtain an exemption from the prospectus delivery requirement, either with respect to CBs or other Units listed on the Exchange. In the event it obtains such an exemption, the Exchange will discuss with Commission staff the appropriate level of disclosure that should be required with respect to the Units being listed, and will file any necessary rule change to provide for such disclosure.

³⁵ NYSE Rule 405(1).

apply to the trading of equity securities also will apply to Units, including CBs. These rules include those governing: the auction market (including trading halt provisions pursuant to Rule 80B); priority, parity and precedence of orders; members dealing for their own accounts; specialist, odd-lot broker, and registered trader responsibilities; handling of orders and reports; publications of transactions and changes; comparisons and exchange of contracts; marking to the market; settlement of contracts; dividends, interests, and rights; reclamations; closing contracts; and liquidation of securities loans and borrowings.³⁶ The NYSE also will consider halting trading in any series of Units if it deems doing so necessary to maintain a fair and orderly market in that series of Units.³⁷

In addition, the NYSE has developed specific listing and delisting criteria for Units. These criteria should help to ensure that a minimum level of liquidity will exist in each series of Units to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Exchange to consider the suspension of trading and the delisting of a series of Units, including CBs, if an event were to occur that made further dealings in the securities inadvisable. This will give the Exchange flexibility to delist Units, including CBs, if circumstances warrant such action. For example, as noted above, delisting of CBs might be appropriate if Telesphere no longer were able to calculate indicative values, and no acceptable alternative arrangements could be found. In addition, as noted above, in the unlikely event that CBs become a surrogate for trading a single or few securities, such an event could raise issues pursuant to the Act that would require delisting of CBs so as to ensure compliance with the Act.³⁸ Accordingly, the Commission believes that the rules governing the trading of Units provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

D. Indicative Indices

The Commission believes that the indicative values the Exchange proposes to have disseminated for the nine Indices upon which CBs are based will provide investors with timely and

accurate information concerning the value of the FT/S&P. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently-available stock price information. Moreover, it will be calculated based upon the same pricing algorithm and methodology used by the FT/S&P calculators and will be disseminated every 30 seconds during the regular NYSE trading day.³⁹ In addition, since it is expected that the market value of the CBs will closely track the performance of the applicable FT Index,⁴⁰ the Commission believes that the indicative values will provide investors with adequate information to determine the intra-day value of a given CB series.⁴¹

E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market-making responsibilities. In addition, because the specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor (and only at NAV), and Creation Transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted below, the Exchange's existing surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the NYSE's rule proposal does not address any other requirements

or obligations under the federal securities laws that may be applicable.⁴²

F. Surveillance

The Commission believes that the NYSE's existing surveillance procedures should be adequate to address any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its existing surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with the rule.⁴³

The Commission also notes that certain concerns are raised when a broker-dealer, such as Goldman, is involved in the development and maintenance of a stock index upon which a product such as Units, in this case CBs, is based.⁴⁴ The Commission believes that adequate safeguards exist to address this concern. All stock additions and deletions, whether by vote of the WIPC or according to the rules governing day-to-day index maintenance, are announced in the FT newspaper. No information about changes may be discussed outside the WIPC or the staff responsible for maintaining the Indices at Goldman until such a public announcement is made. Following the announcement, Goldman may forward information about changes to other areas of the firm and to its clients. In addition, this restriction is enforced internally

⁴² Broker dealers and other persons will be cautioned in the prospectus and/or the Fund's statement of additional information that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

⁴³ Letter from Robert J. McSweeney, Senior Vice President, Market Surveillance, NYSE, to Sharon Lawson, Assistant Director, OMS, Division, Commission, dated January 22, 1996.

⁴⁴ Letter from Paul A. Merolla, Associate General Counsel, Goldman, to Francois Mazur, Attorney, OMS, Division, Commission, dated February 15, 1996 ("Goldman Letter"). Currently, the FT/S&P Indices are jointly compiled by FT-SE International and Goldman in conjunction with the Institute of Actuaries and the Faculty of Actuaries. FT-SE International and Goldman each has primary responsibility for data collection and calculation of one-half of the markets in the Indices. With respect to the nine Indices upon which CBs are based, Goldman has primary responsibility for the U.S., France and South Africa Indices, while FT-SE International has primary responsibility for the Australia, Germany, Hong Kong, Italy, Japan, and United Kingdom Indices. By mid-1996, Goldman expects that primary responsibility for the U.S. series will shift to S&P, while primary responsibility for the remaining Indices will shift to FT-SE International. *Id.*

Goldman is, and expects to remain, a member of the WIPC. The WIPC is responsible for making policy decisions concerning the Indices, including construction techniques and changes to the constituent securities of the Indices. *Id.*

³⁹ Amendment No. 1, *supra* note. 4.

⁴⁰ See Form N-1A, *supra* note 9. Each CB series will be required to invest the largest proportion of its assets as is practicable, and in any event at least 95% of its net assets, in the securities of the corresponding FT/S&P Index, and the weighting of the portfolio securities of each CB series will substantially correspond to their proportional representation in the relevant FT/S&P Index.

⁴¹ In addition, each series will calculate its NAV per share at the close of the regular trading session for the NYSE on each day that the Exchange is open for business. NAV generally will be based on the last quoted sales price on the securities exchange or national securities market on which a given series' component securities are quoted. *Id.*

³⁶ NYSE Rules 45-298.

³⁷ For example, the NYSE has stated that it would consider halting the trading in a series of Units if trading has been halted or suspended in the primary market for stocks representing a significant percentage (such as 20 percent) of the value of the underlying stock index or portfolio.

³⁸ See note 22, *supra*.

through Goldman's policies and procedures that prevent employees either from using proprietary information (such as non-public information involving changes to the Indices) for personal benefit or to share it with others.⁴⁵ The Commission believes that these provisions should help to address concerns raised by Goldman's involvement in the management of the Indices.

G. Scope of the Commission's Order

The Commission is approving in general the Exchange's proposed listing standards for Units representing an interest in an Investment Company that would hold a Fund Basket, and specifically the nine series of CountryBaskets described herein. Other similarly structured products, including CBs based on FT/S&P Indices not described herein, would require review by the Commission pursuant to Section 19(b) of the Act prior to being traded on the Exchange.

The Commission finds good cause for approving Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 details the calculation and dissemination of Index changes and Index component changes. In addition, Amendment No. 1 describes certain minor modifications to the Exchange's proposal since it originally was published for comment. Amendment No. 2 effects two minor word changes to the proposal's amending of NYSE Rule 460.

The Commission believes that Amendment Nos. 1 and 2 effect only technical changes that do not materially affect the character and scope of the Exchange's original proposal. Accordingly, the Commission believes that Amendment Nos. 1 and 2 raise no new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act⁴⁶ to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-95-23 and should be submitted by April 3, 1996.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁷ that the proposed rule change (File No. SR-NYSE-95-23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁸

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36969; File No. SR-Philadep-95-13]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Institutional Delivery System Features in the Philanet Terminal System

March 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 26, 1995, the Philadelphia Depository Trust Company ("Philadep") 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 primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

Philadep proposes to provide its participants with access to several additional Institutional Delivery ("ID") system features through their Philanet terminals.²

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

In its filing with the Commission, Philadep included statements concerning the purpose of and the 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. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

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

The purpose of the proposed rule change is to make several features of Philadep's ID system available to ID participants through their Philanet terminals. These features currently exist in the form of hardcopy reports or instructions and are available to participants upon request.

The first feature of the proposed rule change allows Philadep participants to cancel all affirmed trades through their Philanet terminals. Currently, participants cancel ID trades affirmed prior to the settlement date by faxing a form to Philadep indicating the trades to be cancelled. Philadep then processes the cancellations and cancels the trade delivery. The enhancement to the Philanet system will allow Philadep participants to cancel trades directly through their Philanet terminals by selecting the "Cancel Affirmed ID Trades" function.

The second feature of the proposed rule change allows participants to use Philanet to inquire about the status of their ID trades. To make the inquiry, participants will select the "ID Trades Inquiry" function. Using this inquiry screen, participants may view any single trade, a particular CUSIP, the settlement date, processing date, or trade date.

² Philanet is an on-line terminal network system. Philanet allows participants to access information affecting their accounts through an on-site terminal located at the participants' offices.

³ The Commission has modified the text of the summaries prepared by Philadep.

⁴⁵ *Id.*

⁴⁶ 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2) (1988).

⁴⁷ 15 U.S.C. § 78s(b)(2) (1988).

⁴⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).