

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-96-05 and should be submitted by August 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37452; International Series Release No. 1006; File No. SR-PSE-96-15]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to Investment Company Units

July 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 3, 1996, the Pacific Stock Exchange Incorporated ("PSE" 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 self-regulatory organization. On July 2, the PSE filed Amendment No. 1 to its proposal.<sup>2</sup> 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 establish listing standards for Investment Company Units ("Units"), and to trade Units known as "CountryBaskets" ("CBs") pursuant to unlisted trading privileges ("UTP").

#### 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 self-regulatory organization 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 self-regulatory organization 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

The Exchange proposes to adopt new rules relating to listing standards for Units. Units represent an interest in a registered investment company ("Investment Company" or "Fund") that could be organized as a unit investment trust ("UIT"), an open-end management investment company, or a similar entity. Under the proposed rules, the Investment Company would be required either to: (i) Hold securities comprising or otherwise based on or representing an interest in an index or portfolio of securities, or (ii) hold securities in another registered investment company. The Investment Company would then issue Units in a specified aggregate number in return for a deposit either of: (i) Shares of securities comprising or otherwise based on the relevant index or portfolio, or (ii) shares of a registered investment company. In addition to or instead of the "in-kind" deposit, the Investment Company might require a cash deposit. Thus, Units could represent an interest in series of an open-end management investment company investing in a portfolio of securities ("Fund-only structure"). Alternatively, Units could represent an

interest in UITs that have as their assets shares of an open-end investment company holding a portfolio of securities ("Fund/UIT structure"). Unit holders would receive periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company (after subtracting applicable expenses and charges.)

The Exchange also proposes to trade, pursuant to UTP, Units known as "CountryBaskets" or "CBs." These securities were approved recently for listing on the New York Stock Exchange, Inc. ("NYSE").<sup>3</sup> The nine series of CBs are based on the following Financial Times/Standard & Poor's Actuaries World ("FT/S&P") Indices: Australia; France; Germany; Hong Kong; Italy; Japan; South Africa; United Kingdom; and the United States. The Exchange notes that pursuant to Rule 12f-5 under the Act,<sup>4</sup> prior to trading a particular class or type of security pursuant to UTP, the Exchange must have listing standards comparable to those of the primary exchange on which the security is listed. Hence, the PSE's proposed listing standards for Units are similar to the listing standards for Units adopted by the NYSE.<sup>5</sup>

#### 1. 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 PSE proposal sets forth listing standards applicable both to a Fund-only structure and a Fund/UIT structure. The nine CB series the PSE proposes to trade 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. Sales occur in "Creation United" size aggregations in exchange for a deposit ("Deposit") of a basket of securities reflecting the securities underlying the Fund ("Index Securities") and a specified amount of cash sufficient to equal the NAV of Fund shares.<sup>6</sup> Creation Unit size

<sup>3</sup> See Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410.

<sup>4</sup> 17 CFR 240.12f-5.

<sup>5</sup> Amendment No. 1, *supra* note 2.

<sup>6</sup> *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

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<sup>1</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>12</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Amendment No. 1 clarifies that the PSE seeks to trade CountryBaskets pursuant to unlisted trading privileges. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Francois Mazur, Attorney, Division of Market

Regulation, Commission, dated July 1, 1996 ("Amendment No. 1").

holdings then can be disaggregated into tradeable Units and sold separately or in lots on the Exchange.

Units could be recombined into "Redeemable Units," equivalent in size to Creation Units and redeemed at NAV, generally for the Index Securities represented by the Redeemable Unit, plus a cash payment. An individual Unit will not be redeemable. For the Australia, France, Germany, Hong Kong, Italy, South Africa, United Kingdom, Germany, Hong Kong, Italy, South Africa, United Kingdom, and United States CountryBasket series, there are 100,000 CBs per Creation Unit. For the Japan series, there are 250,000 CBs per Creation Unit. With the exception of the Japan series, a Creation Unit size aggregation of Fund shares represents securities with approximately \$2 to \$5 million in market value. A Creation Unit size aggregation of Fund shares for the Japan series has an approximate value of \$9.5 million.<sup>7</sup>

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.<sup>8</sup> Thereafter, Fund shares could be purchased throughout the life of the product. Therefore, the offering will be continuous.

## 2. Exchange Trading of Units

Units, including CBs, are deemed equity securities subject to PSE 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, for which 500,000

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.

<sup>7</sup> *Id.* The large size of round lots in Japan, and the requirement that all purchases in that market be in round lots, requires that a Creation Unit be structured so that the Index Securities consist 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.*

<sup>8</sup> 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.

tradeable Units, representing two Creation Units, will be required to be outstanding prior to commencing trading. 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.

Dealing in Units on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules.<sup>9</sup> The Exchange's general dealings and settlements rules will apply.<sup>10</sup> Other Exchange equity rules and procedures, such as the Exchange's equity margin rules, also will apply.<sup>11</sup> 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. 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.

## 3. Specialists

Any Creation Transactions in which the specialist engages will have to be effected through the Distributor, and not directly with the issuer. 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.

## 4. Disclosure

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933 ("1933 Act"), all investors in Units, including CountryBaskets, will receive a prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in

Units, including those engaging in secondary market purchases on the PSE in CBs. The prospectus and all marketing material will refer to Units 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.

Upon the 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 9.1(a) ("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.

## 5. Trading Halts

Trading of Units would be halted, along with the trading of all other listed stocks, in the event the "circuit breaker" thresholds were reached.<sup>12</sup> 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 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.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it 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.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

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

<sup>9</sup> See PSE Rule 5 (Equities).

<sup>10</sup> *Id.*

<sup>11</sup> See Rules 2.16(a) *et seq.*

<sup>12</sup> The Exchange's "circuit breaker" policies were approved in Exchange Act Release No. 26268 (December 16, 1988), 53 FR 51942.

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

Written comments on the proposed rule change were neither solicited nor received.

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 such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37453; File No. SR-PHLX-96-16]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Listing Standards**

July 18, 1996.

On May 20, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to revise a drafting error that occurred in PHLX Rule 804(2) pertaining to listing criteria.<sup>3</sup>

The proposed rule change was published for comment in Securities Exchange Act Release No. 37279 (June 5, 1996), 61 FR 29782 (June 12, 1996). No comments were received on the proposal.

Currently, PHLX Rules 803 through 805 describe a two-tier structure for listing common stock, preferred stock, bonds and debentures, various types of warrants, contingent value rights, and other securities.<sup>4</sup> For Tier I securities, two alternative minimum listing standards are described. PHLX Rule 803 sets forth the first alternative ("Alternative 1"), while PHLX Rule 804 sets forth the second alternative ("Alternative 2"), which is geared toward mid-sized and research and development companies. Both rules are based substantially upon the Memorandum of Understanding ("MOU") on the uniform model marketplace exemption that had been approved by the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrators Association, Inc. ("NASAA").<sup>5</sup>

The current PHLX Rule 804(2) sets forth a general requirement that the public float for issuers is 1,000,000 shares, with an additional shareholder requirement that the issuer have at least 800 public shareholders if the issuer has between 500,000 and 1,000,000 shares publicly held, or at least 400 public shareholders if the issuer has either over (i) 1,000,000 shares publicly held, or (ii)

over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six-month period preceding the date of application.

The Exchange proposes to amend this rule to provide that issuers seeking to list pursuant to Rule 804 must show that there are at least 1,000,000 shares publicly held and at least 400 public shareholders in the security. The Exchange states that the current Rule 804 incorrectly incorporated some of the language from the public float/public shareholder requirements in Alternative 1 for Tier I securities set forth in Rule 803.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>6</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The Commission believes that the proposal is consistent with the purposes of the Act in that the amended Rule 804(2) will reflect the original intent of the Exchange and the MOU. In addition, the amendment to the rule is not a substantive change. Rule 804(2) sets forth a requirement that the public float for Tier I issuers under Alternative 2 must be at least 1,000,000 shares.<sup>7</sup> The holder requirement in current Rule 804(2) states that an issuer listing under Alternative 2 must have either (1) a minimum of 800 public shareholders if the issuer has between 500,000 and 1,000,000 shares, or (2) a minimum of 400 public shareholders if the issuer has either (i) over 1,000,000 shares publicly held or (ii) over 500,000 shares publicly held and average daily volume in excess of 2,000 shares per day for a six-month period preceding the date of application. Because the minimum public float requirement for companies listing under this alternative is 1,000,000 shares, an issuer can never be eligible to have less public float by meeting the higher 800 public shareholder requirement or the trading

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1996).

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

<sup>3</sup> See Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994) (File No. SR-PHLX-93-31) (order approving proposed rule change establishing new listing and maintenance standards).

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Act Release No. 6810 (Dec. 6, 1988) (publicizing the release of the MOU).

<sup>6</sup> 15 U.S.C. § 78f(b).

<sup>7</sup> As originally drafted, Rule 804(2) states that the public float of an issuer must be "1,000,000 shares." The Exchange clarified the public float requirement by stating in amended Rule 804(2) that the public float must be "at least 1,000,000 shares."

<sup>13</sup> 17 CFR 200.30-3(a)(12).