

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

The Exchange believes the proposed rule change will impose no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the 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. Persons make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-11 and should be submitted by April 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-36995; International Release No. 954: File No. SR-CBOE 95-71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Criteria for Equity Linked Term Notes ("ELNs")

March 20, 1996.

Pursuant to Section 19(b)(1), of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On January 18, 1996, CBOE filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change to clarify issues relating to the issuance of ELNs on non-U.S. companies that trade in the U.S. market as sponsored American Depositary Receipts, ordinary shares, or otherwise.¹ This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits 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 Exchange proposes to amend its rules relating to the listing criteria for equity linked term notes. The text of the proposed rule change is available at the Office of the Secretary of the CBOE and at the Commission.

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 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. 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

ELNs are intermediate-term (i.e., two to seven years), non-convertible hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock, non-convertible preferred stock, or certain sponsored American Depositary Receipts ("ADRs"). ELNs may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. ELNs also may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, or, conversely, they may feature a "floor" on the minimum principal amount paid to holders upon maturity. A specific issue of ELNs, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of ELNs might offer lower semi-annual payments based upon a floating interest rate with a minimum floor for the repayment of principal of 75% of the issuance price. The flexibility available to an issuer of ELNs permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

The CBOE's proposal would modify the listing standards applicable to the underlying linked security. Paragraph (e) of Rule 31.5.I specifies that a common stock or a non-convertible preferred stock may be considered for listing on the Exchange if the underlying stock meets one of three alternative criteria for market capitalization and trading volume. Lower levels of market capitalization require a higher trading volume for the Exchange to consider listing an ELN on that security. The Exchange believes that two of the three trading volume levels could be reduced without compromising investor protection.

Specifically, the Exchange is proposing that the Exchange be permitted to list an ELN on a security with a market capitalization of at least \$1.5 billion if that security has trading volume in U.S. markets of at least 10 million shares during the 12 month period preceding the listing. Currently, paragraph (e) requires trading volume of 20 million shares for such securities. In

¹ Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated January 17, 1996.

⁴ 17 CFR 200.30-3(a)(12) (1994).

addition, the Exchange is proposing that it be permitted to list an ELN on a security with a market capitalization of at least \$500 million if that security has a trading volume in U.S. markets of at least 15 million shares during the 12 month period preceding the listing. Currently, paragraph (e) requires trading volume of 80 million shares for such securities. This reduction in the trading volume levels would enable the Exchange to list ELNs on a wider range of securities and provide investors a new opportunity to participate in the market performance of these securities.

Paragraph (e) would also be revised to specify that the Exchange will file a rule change with the Commission pursuant to Section 19(b) of the Act (rather than merely obtaining concurrence of SEC staff) if it desires to list an ELN on an underlying security that does not meet the market capitalization or trading volume criteria set forth in the rule.

Second, CBOE proposes to amend the ELNs listing standard governing which non-U.S. securities are eligible to be linked to ELNs. Presently, under paragraph (h) of Rule 31.5.I, the Exchange may list ELNs on actively traded non-U.S. securities which are traded in the U.S. market as sponsored ADRs or otherwise, provided that: (1) The Exchange has in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security is traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or (2) the combined trading volume of the non-U.S. security and other related non-U.S. securities (as defined below) occurring in the U.S. market represents (on a share equivalent basis with respect to any ADRs) ("U.S. Trading Volume") at least 50% of the combined worldwide trading volume in the non-U.S. security during the six month period preceding the date of listing ("50% Test").

This paragraph (h) would be revised in three respects. First, the Exchange proposes to revise the manner in which the 50% test is calculated such that trading in the non-U.S. security and other related non-U.S. securities in any market with which the Exchange has in place a comprehensive, effective surveillance sharing agreement would be added to the U.S. market volume for the purpose of determining whether the 50% test has been met. Currently, only trading in the U.S. market counts toward satisfying the 50% test. This change is consistent with the change to the listing criteria for options on ADRs. This change would also be reflected in Interpretation .01 to Rule 31.5.I.

CBOE also proposes to add an alternative set of criteria to paragraph (h) of Rule 31.5.I in order to add a third alternative set of criteria under which the Exchange may list an ELN on a non-U.S. security. This new standard, referred to as the 20% Test + Daily Trading Volume Standard ("20% Test + Daily Trading Volume Standard") would permit the Exchange to list an ELN on a non-U.S. security if each of the following three conditions were satisfied: (1) The combined trading worldwide volume of the non-U.S. security in the U.S. market represents (on a share equivalent basis with respect to ADRs) at least 20% of the combined worldwide trading volume in the non-U.S. security and other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for ELN trading;² (2) the average trading volume for the non-U.S. security in the U.S. market over the six months preceding the date of selection of the non-U.S. security for ELN trading is at least 100,000 shares per day;³ and (3) the trading volume for the non-U.S. security in the U.S. is at least 60,000 shares per day for a majority of the trading days for the six months preceding the date of selection of the non-U.S. security for ELN trading.⁴

As with the 50% Test, the Daily Trading Volume Standard will allow the listing of ELNs on non-U.S. securities in the absence of a comprehensive, effective surveillance sharing agreement between the Exchange and the primary exchange on which the non-U.S. security is traded (in the case of an ADR, the home country where the security underlying the ADR is traded). The Exchange believes the Daily Trading Volume Standard is justified because it will enable the Exchange to list ELNs on non-U.S. securities that are widely followed by U.S. investors but that do not meet the 50% Test. Although the Daily Trading Volume Standard reduces from 50% to 20% the percentage of worldwide trading that must occur in the U.S. market, it also requires the non-U.S. security to meet certain trading levels in the U.S. market. The Exchange believes the Daily Trading Volume Standard's requirement of observable, high trading volume should ameliorate regulatory concerns regarding investor protection. In addition, it should be noted that the

Daily Trading Volume Standard is the same standard approved by the Commission in determining on which ADRs the Exchange may list options, except that CBOE believes the standard for ELNs is actually stricter because it requires the 20% test to be met over a longer period (six months instead of three).⁵

Finally, the Exchange proposes to amend paragraph (g) to Rule 31.5.I in order to clarify the limitation on the number of ELNs that may be linked to a particular security. Specifically, the issuance of ELNs relating to any underlying non-U.S. security may not exceed 2% of the total shares outstanding worldwide if at least 20% of the worldwide trading volume occurs in the U.S. market during the six-month period preceding the date of listing.⁶ The Exchange notes that this change is consistent with the Daily Trading Volume Standard requirement contained in paragraph (h) that requires at least 20% of the combined worldwide trading volume in the non-U.S. security to occur in U.S. markets.⁷ This change would also be reflected in Interpretation .04 to the Rule.

Because this new listing standard would enable the Exchange to list ELNs on widely followed non-U.S. securities without comprising investor protection concerns, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, and to protect investors and the public interest.

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

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

⁵ See also note 2, *supra*.

⁶ The other size limitations in CBOE's rule remains unchanged. Accordingly, the size of ELN issuances linked to non-U.S. securities will be limited to 3% of the total shares of the underlying security outstanding provided, however, at least 50% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market, or 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security for the six-months prior to listing occurred in the U.S. market.

⁷ As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement are not included in the calculation for purposes of determining the size of eligible ELN issuances.

² The calculation for the 20% Test + Daily Trading Volume Standard does not include foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1.

³ See Amendment No. 1.

⁴ *Id.*

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

Comments were neither solicited nor received.

III. Findings and Conclusions

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).⁸ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission finds that the proposal to reduce the trading volume requirement for eligible linked securities will expand the number of securities that can be linked to ELNs while maintaining the requirement that the linked security be an actively traded, highly capitalized common stock or ADR. While the proposal reduces the trading volume criteria for securities with market capitalizations in the \$1.5 billion and \$500 million tiers to 10 million and 15 million shares, respectively (from 20 and 80 million shares, respectively), the Commission nevertheless believes that, together, the applicable capitalization and new trading volume requirements will continue to help ensure that ELNs are only issued on highly liquid securities of broadly capitalized companies. Accordingly, the Commission believes that these requirements will continue to help reduce the likelihood of any adverse market impact on the securities underlying ELNs.

The Commission notes that the Exchange has deleted the provision that allows it to list ELNs on securities not meeting the market capitalization and trading volume criteria if the Division of Market Regulation of the SEC concurs.⁹ The revised criteria will expand the number of securities eligible for ELNs trading. The increased flexibility in the ELNs listing criteria should effectively reduce or eliminate the need for additional discretion in this area, in addition to providing issuers and the

Exchange with specific and clear guidance on the applicable listing criteria for a security to be eligible to underlie an ELN.

The Commission also believes that the additional proposed amendments to the listing standards for ELNs on non-U.S. securities will benefit investors by effectively increasing the number of available ELNs-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security ELNs and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with ELNs on non-U.S. securities without compromising the effectiveness of the Exchange's listing standards for such securities.

Currently, the 50% Test allows the Exchange to list ELNs on a non-U.S. security in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market during the six month period preceding the selection of the non-U.S. security for ELN listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities.

The Commission has previously concluded that the 50% Test helps to ensure that the relevant pricing market for non-U.S. securities underlying ELNs occurs in the U.S. market.¹⁰ In such cases, the Commission has previously found that the U.S. market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying non-U.S. security ELN market. Because the U.S. self-regulatory organizations which comprise the U.S. market for non-U.S. securities are members of the Intermarket Surveillance Group,¹¹ the

Commission has concluded that there exists an effective surveillance sharing agreement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the non-U.S. security ELNs or their underlying securities.

The Exchange proposes to modify the 50% Test to include in the U.S. market volume calculation the trading volume in non-U.S. securities and other related non-U.S. securities that occur in any market with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the ELN Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that list the non-U.S. security underlying the Exchange's ELNs in order to adequately investigate any potential abuse or manipulation.

Additionally, the Commission finds that the proposed 20% Test + Daily Trading Volume Standard is consistent with the Act and with the ELN Approval Orders. As noted above, the 20% Test + Daily Trading Volume Standard will allow the Exchange to list ELNs on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for ELNs trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide

Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: The American Stock Exchange, Inc.; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

⁸ 15 U.S.C. 78f(b)(5) (1982).

⁹ As noted above, CBOE has replaced this section with a provision stating it would have to file a Section 19(b) rule change if it desires to list an ELN on an underlying security that does not meet these standards.

¹⁰ See Securities Exchange Act Release Nos. 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR-Amex-93-46); 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (SR-CBOE-94-04); 34758 (September 30, 1994), 59 FR 50943 (October 6, 1994) (SR-NASD-94-49); 34985 (November 18, 1994), 59 FR 60860 (November 28, 1994) (SR-NYSE-94-37); and 35479 (March 13, 1995), 60 FR 14993 (March 21, 1995) (SR-Phlx-95-09) ("ELN Approval Orders").

¹¹ The Intermarket Surveillance Group ("ISG") was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket

trading volume in the non-U.S. security and other related non-U.S. securities;¹² (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the 50% Test by limiting the actual listing of ELNs on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the ELN. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the Exchange believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for ELNs issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain an ELNs listing. The Commission believes that it is appropriate to adjust the limitations on the size of the ELNs issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume, the issuance will be limited to 2% of the total outstanding shares of the underlying security. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate ELNs trading. In this regard, the Commission believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

¹² The Commission notes that the 20% Test + Daily Trading Volume Standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of ELNs only on non-U.S. securities that have active and liquid markets in the U.S.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow CBOE to implement these changes to its ELNs Listing Standards without delay. The proposal will provide the Exchange with increased flexibility in the listing of ELNs products on both U.S. and non-U.S. securities without compromising investor protection concerns. In addition, the CBOE proposal is substantially similar to, and is being approved concurrently with, two American Stock Exchange proposals relating to ELNs listing standards, both of which were subject to the full notice and comment period.¹³ The Commission notes that no comment letters were received on these Amex proposals. Accordingly, the Commission does not believe the CBOE proposal, as amended, raises any new or unique regulatory issues. For these reasons, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

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 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 17, 1996.

¹³ See Securities Exchange Act Release Nos. 36538 (Nov. 30, 1995) (notice of filing of SR-Amex-95-44) and 36578 (Dec. 13, 1995) (notice of filing of SR-Amex-95-48).

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-CBOE-95-71) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-7396 Filed 3-26-96; 8:45 am]

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[Release No. 34-36994; International Release No. 953; File No. SR-NASD-96-01]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing Criteria for Selected Equity Linked Debt Securities ("SEEDS")

March 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. On February 1, 1996, the NASD filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change to revise the trading volume requirement for securities underlying an issuance of SEEDS and to clarify issues relating to the issuance of SEEDS on non-U.S. companies that trade in the U.S. market as sponsored American Depositary Receipts ("ADRs"), ordinary shares, or otherwise.¹ This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits 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 NASD is proposing to amend the listing standards for Selected Equity-Linked Debt Securities ("SEEDS")² found in Section 2(f) of Part III to Schedule D to the NASD By-Laws

¹⁴ 15 U.S.C. 78s(b)(2) (1988).

¹⁵ 17 CFR § 200.30-3(a)(12) (1994).

¹ Letter from Joan C. Conley, Corporate Secretary, NASD, to Michael Walinskas, SEC, dated January 29, 1996.

² "SEEDS" and "Selected Equity-Linked Debt Securities" are service marks of The Nasdaq Stock Market, Inc.