

1996 Act, among other things, amended section 3(c)(1) of the Investment Company Act (the existing exclusion from Investment Company Act regulation used by privately offered investment companies) and added section 3(c)(7) to create a new exclusion from regulation under the Investment Company Act for privately offered investment companies that consist solely of "qualified purchasers" owning or investing on a discretionary basis a specified amount of "investments." The new rules would: (i) define the term "investments" for purposes of the qualified purchaser definition; (ii) define the term "beneficial owner" for purposes of the provisions that permit an existing privately offered investment company to convert into a qualified purchaser pool or to be treated as a qualified purchaser; (iii) address certain interpretative issues under section 3(c)(7); (iv) address certain interpretative issues under section 3(c)(1) resulting from changes made by the 1996 Act; (v) address investments in privately offered investment companies by "knowledgeable employees"; and (vi) address certain transfers of securities issued by privately offered investment companies.

The subject matter of the closed meeting scheduled for Thursday, April 3, 1997, following the 10:00 a.m. open meeting, will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: March 26, 1997.

Jonathan G. Katz,
Secretary.

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[Release No. 34-38431; file No. SR-CBOE-97-13]

**Self Regulatory Organizations;
Chicago Board Options Exchange,
Inc.; Notice of Filing and Order
Granting Accelerated Approval of
Proposed Rule Change Relating to
Short Sales of S&P 500 Index Bear
Market Warrants**

March 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(11Act"),¹ notice is hereby given that on February 26, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by CBOE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

CBOE is proposing to amend Rule 30.20 relating to short sales, to reflect an exemption granted by the Commission pursuant to Exchange Act Rule 10a-1² for S&P 500 Index Bear Market Warrants ("Warrants").³

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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**

CBOE is proposing to amend Rule 30.20 regarding short sales, to reflect an exemption granted by the Commission pursuant to Exchange Act Rule 10a-1 for S&P 500 Index Bear Market Warrants.

Description of S&P 500 Warrants

The CBOE is currently trading S&P 500 Index⁴ Bear Market Warrants with

3-month Reset, expiring November 20, 1997, issued by the International Finance Corporation ("IFC" or "Corporation").⁵ The Warrants constitute direct, unconditional, general and unsecured obligations of the Corporation. There were 1,250,000 warrants originally offered, and the trading symbol is OPT.WS. The Warrants trade on the New York Stock Exchange ("NYSE") and CBOE. The Warrants are quoted and traded like other equity securities, generally in round lots of one hundred. Odd lots (less than 100 Warrants) also may be traded.

The Warrants are exercisable immediately upon purchase, subject to postponement for certain extraordinary events and subject to maximum or minimum exercise amounts, and may be exercised at any time until 3:00 p.m., New York City time, on the fourth Index Calculation Day immediately preceding November 20, 1997 ("Expiration Date") or any earlier Delisting Date. The Warrants will expire on the Expiration Date.

No fewer than 500 Warrants may be exercised by or on behalf of a Warrant holder at any one time, except in the case of automatic exercise of the Warrants or exercise upon cancellation of the Warrants. All exercises of Warrants (other than on automatic exercise or upon cancellation) are subject, at the Corporation's option, to the limitation that on any exercise date, not more than 1,000,000 Warrants in total may be exercised and not more than 250,000 Warrants on behalf of any person or entity may be exercised.

The holder of the Warrants will be entitled to receive the product, if positive of U.S. \$50 multiplied by (i) the amount, if any, by which the Index Strike Price for the applicable Valuation Date exceeds the Index Spot Price, divided by (ii) the Index Strike price, as described in the following formula:

⁵ The International Finance Corporation is an international organization that was established in 1956 to further economic growth in its developing member countries by promoting private sector development. The Corporation, together with private investors, assists in financing the establishment, improvement and expansion of private sector enterprises by making investments where sufficient private capital is not otherwise available on reasonable terms. The Corporation's share capital is provided by its member countries. It raises most of the funds for its investment activities through the issuance of notes, bonds and other debt securities in the international capital markets.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.10a-1 (1993).

³ The text of the proposed rule change is available for review in the Office of the Secretary, at CBOE and in the Public Reference Room of the Commission.

⁴ The Index is maintained and published by Standard & Poor's, Inc. and is intended to provide a performance benchmark for the U.S. equity markets. The Index is a capitalization weighted measure of the aggregate market value of 500 common stocks. The Index includes 105 individual groups and 11 economic sectors.

U.S. $\$50 \times (\text{Index Strike Price} - \text{Index Spot Price})$

Index Strike Price

The Index Strike price is 743.95, which is the closing level of the Index on the date of the Prospectus, and the Index Spot Price will be determined upon exercise. If the closing level of the Index on February 20, 1997 ("Reset Date Closing Level") is above 743.95, then the Index Strike Price with respect to the Warrants will be increased to the Reset Date Closing Value on the Reset Date.

The "Valuation Date" for a Warrant will be the first Index Calculation Day immediately succeeding the applicable Exercise Date, subject to postponement upon the occurrence of certain extraordinary events or exercise limitation events, as described in the prospectus.

Exemption From Rule 30.20

Exchange Act Rule 3b-3⁶ defines the term "short sale," and Exchange Act Rule 10a-1⁷ governs short sales generally. Paragraph (a) of Rule 10a-1 covers transactions in any security registered on a national securities exchange, if trades in such security are reported in the consolidated transaction reporting systems, and prohibits short sales with respect to these securities unless such sales occur on a "plus tick" (i.e., at a price above the price at which the immediately preceding sale was effected), or a "zero-plus tick" (i.e., at the last sale price if it was higher than the last different price). The CBOE has adopted a similar provision applicable to certain CBOE securities than is set forth in paragraph (b) of Rule 30.20. Exchange Act Rule 10a-1 and CBOE Rule 30.20 are designed to prevent the market price of a stock (or other reported security, as that term is defined in paragraph (a)(4) of Rule 11Aa3-1 under the Exchange Act)⁸ from being manipulated downward by unrestricted short selling.

CBOE Rule 30.20(b) sets forth that securities exempted from the requirements of Exchange Act Rule 10a-1 will likewise be exempt from the parallel provisions of 30.20(b) which applies to the trading of stock, warrants, unit investment trust interests, and other securities subject to Chapter XXX of the rules of the Exchange. By letter dated March 21, 1997, in response to a request previously submitted by CBOE,⁹

the Commission exempted short sales of S&P 500 Index Bear Market Warrants from the requirements of Rule 10a-1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of the Warrants or any related security.¹⁰ In order to give effect to the exemption, it is necessary that short sales of Warrants also be exempt from CBOE Rule 30.20(b), subject to the same condition. CBOE proposes to add an interpretation to Exchange Rule 30.20 (1) describing the exemption for Warrants from Rule 10a-1 contained in the no-action letter; and (2) stating that so long as that exemption remains in force, short sales of Warrants would be exempt from the tick requirements of paragraph (b) of CBOE Rule 30.20.

The CBOE believes that secondary market transactions in S&P 500 Index Bear Market Warrants ("Warrants") can appropriately be exempted from paragraph (b) of Rule 30.20.¹¹ The CBOE can not conceive of circumstances in which a person would sell the Warrants in an effort to affect the price of a single component stock or security. First, the prices of the Warrants are not dependent upon the price of any one stock. Rather, the prices are based upon the relationship of the value of the S&P 500 Index to the Valuation Data Amount as defined in the prospectus. The CBOE therefore does not believe that a person seeking to manipulate the market price of any one of the stocks that make up the S&P 500 Index would seek to sell the Warrants as a means of accomplishing that result.

Second, CBOE believes that any temporary disparities in relative market values between the Warrants and the underlying Index would tend to be corrected immediately by arbitrage activity. The arbitrage opportunity is

created as a result of the ability of the Warrants to be exercised according to the formula described above. Under these circumstances, it seems unlikely that short sales of the Warrants could be used to depress the price of the underlying securities.

Moreover, the short sale rule does not apply to analogous derivative products such as index options and futures contracts. Because the Warrants will be used to offset or hedge positions in the related futures or options contracts, application of the short sale rule to the Warrants when it is not applicable to futures or options contracts would increase risks to investors seeking to engage in trading activities which might involve short sales of the Warrants and detract from the ability of market participants to insure fair valuation of the Warrants.

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will impose any burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received.

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

CBOE requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹² for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that CBOE's proposal to amend Rule 30.20 to reflect the exemption granted by the Commission pursuant to Exchange Act Rule 10a-1 for S&P 500 Index Bear Market Warrants is consistent with the

⁶ 17 CFR 240.3b-3.

⁷ 17 CFR 240.10a-1.

⁸ 17 CFR 240.11Aa3-1(a)(4).

⁹ See Letter from Timothy Thompson, Senior Attorney, CBOE, to Blair Corkran, Senior Special

Counsel, Division of Market Regulation, Commission, dated February 27, 1997.

¹⁰ See Letter from Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, to Timothy Thompson, Senior Attorney, CBOE, dated March 21, 1997.

¹¹ The Exchange believes that the situation presented is very analogous to the case of SuperShares, which were interests in a unit investment trust which had the objective of providing investment results corresponding to the price and yield performance of stocks in the Standard & Poor's 500 Composite Stock Index. The Commission approved an interpretation exempting SuperShares from paragraph (b) of Rule 30.20. See Securities Exchange Act Release No. 33015 (October 5, 1993), 58 FR 53006 (October 13, 1993).

¹² 15 U.S.C. § 78s(b)(2).

Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)¹³ which requires that the CBOE's rules be designed, among other things, to promote just and equitable principles of trade. The Commission believes that by adding interpretive language to CBOE Rule 30.20, CBOE effectively clarifies the exemption of S&P 500 Index Bear Market Warrants from the requirements of Exchange Act Rule 10a-1 regarding short sales and the exemption from application of Rule 30.20(b). The Commission believes that the interpretation to Rule 30.20 appropriately reflects the exemption and conditions thereto as set forth in the No-Action Letter issued by the Commission, and that the proposed rule change does not raise any regulatory concerns because, as noted above, the Commission has previously exempted such short sales. The Commission notes that the Warrants will be exempt from the requirements of CBOE Rule 30.20(b) so long as the Commission's exemption remains in effect.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register** because the proposal accurately codifies the position previously taken by the Commission in the Warrant No-Action Letter. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. 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. 20549. Copies of such

filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-97-13 and should be submitted by April 21, 1997.

Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, and in particular with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-CBOE-97-13) is hereby approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-8074 Filed 3-28-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 21, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-97-2253.

Date Filed: March 21, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 1997.

Description

Application of Thai Airways International Public Company Limited, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the Regulations, applies for an amendment of its foreign air carrier permit to engage in the scheduled foreign air transportation of persons, property and mail in a manner described in the Agreement and the MOU as follows, with any omissions or

inconsistencies to be resolved in favor of encompassing the maximum authority permitted under the Agreement and MOU;

A. With respect to scheduled combination foreign air transportation in both directions between points on the following routes:

(i) From Thailand via intermediate points to 8 points in the United States plus an additional 10 points in the United States for code share services only and beyond to Canada, Mexico, and a total of three additional points in Central and South America. All points in the United States and the three unnamed beyond points are to be selected by Thailand, and may be changed by Thailand upon 60 days' prior notice to the United States.

(ii) From Thailand via intermediate points across the Pacific to Hawaii, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa and beyond.

B. With respect to scheduled all-cargo foreign air transportation in both directions between points on the following route:

(i) From Thailand via intermediate points to a point or points in the United States and beyond.

Docket Number: OST-97-2255.

Date Filed: March 21, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 1997.

Description

Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for the issuance of a certificate of public convenience and necessity so as to authorize CAT to operate charter passenger services in interstate air transportation.

Docket Number: OST-97-2256.

Date Filed: March 21, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 1997.

Description

Application of Custom Air Transport, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for the issuance of a certificate of public convenience and necessity so as to authorize CAT to operate charter passenger services in foreign air transportation.

Docket Number: OST-97-2257.

Date Filed: March 21, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 18, 1997.

¹³ 15 U.S.C. § 78f(b)(5) (1988).

¹⁴ 15 U.S.C. § 78s(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12) (1996).