

smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. CNG Technologies is currently a subsidiary of Products and Services. Applicants propose that the outstanding common stock of CNG Technologies be declared as a dividend by Products and Services to CNG, and subsequently be transferred by CNG as a capital contribution to Power Company after Power Company becomes a direct subsidiary of CNG.

#### Main Pass and Oil Gathering Each Become a Subsidiary of Producing Company

Producing Company is a wholly owned subsidiary of CNG which engages in gas and oil exploration and production primarily in the Gulf of Mexico, the southern and western United States, the Appalachian region and in Canada.

By order dated July 26, 1995, HCAR No. 26341 ("July 1995 Order"), Energy Services was authorized, without further Commission approval, through December 31, 1997, to invest an aggregate amount up to at least \$150 million to acquire direct or indirect interests in entities engaged in Gas Related Activities.<sup>2</sup>

As of December 31, 1997, Energy Services had invested \$24,235,000 and \$14,323,000 and acquired a partnership interest in the Main Pass Gathering Company and the Main Pass Oil Gathering Company, respectively, under the July 1995 Order. Energy Services owns the interests in these partnerships through Main Pass and Oil Gathering, respectively.

The July 1995 Order was extended through December 31, 2002 by Commission order dated December 30, 1997, HCAR No. 26807 ("December 1976 Order"). The December 1997 Order also increased the amount Energy Services may invest and the amount of guarantees which could be made to \$200 million in each case.

Applicants propose the transfer of ownership of all of the outstanding common stock of Main Pass and Oil Gathering to be held by CNG after completion of Phase One to Producing Company. The transfer would occur through a transfer by CNG of the stock to Producing Company as a capital contribution.

<sup>2</sup> "Gas Related Activities" include purchasing, pooling, transporting, exchanging, storing and selling gas supplies from competitively priced sources, including the spot markets, independent producers and brokers, and Producing Company.

#### Producing Company Succeeds to Certain Authorizations

As indicated above, Applicants propose that Producing Company succeed to Energy Services' interests in Main Pass and Oil Gathering, which are acquired by Energy Services under the July 1995 Order. Producing Company will also continue to engage in all aspects of the business of a gas producing company which substantially encompasses all of the activities defined as "Gas Related Activities" in the July 1995 Order. Applicants propose that Producing Company succeed to and be substituted for Energy Services as the authorized party under the July 1995 Order and the December 1997 Order.

#### Source and Form of Declaration and Payment of Dividends

Applicants propose that dividends declared and paid in connection with the restructuring be paid out of capital or unearned surplus, to the extent permitted under applicable corporate law, in the event the payer does not have sufficient earned surplus on its books to cover the amount of the dividend. Applicants represent that the payment of dividends out of capital or unearned surplus in connection with the restructuring would not in any way adversely affect the financial integrity of any company in the CNG system or the working capital of any public utility company in the CNG system.

The Application states that the form of distributions to CNG in Phase One of the restructuring and the timing, manner and extent of the re-distributions by CNG in Phase Two of the restructuring will depend on the CNG system's business needs as well as the ultimate tax impact of the restructuring transactions.

#### Atlantic City Electric Company (70-9307)

Atlantic City Electric Company ("ACE"), 6801 Blackhorse Pike, Egg Harbor Township, New Jersey 08234, a wholly owned electric utility subsidiary of Conectiv, Inc., a public utility holding company to be registered under the Act, has filed an application under sections 9(a) and 10 of the Act and rule 41 under the Act.

By order dated February 25, 1998 (HCAR No. 26832), Conectiv was authorized to acquire all of the outstanding voting securities of ACE, Delmarva Power & Light Company, a public utility company ("Delmarva"), and various nonutility subsidiaries of Delmarva and ACE.

ACE now requests authority to purchase two 39.3 megawatt

combustion turbine generating units and accessory equipment ("Units") for a purchase price of \$8 million. ACE states that the Units were previously leased by ACE under a December 1, 1972 Indenture of Lease ("Lease") among ACE, Frank B. Smith and Ben Maushardt, as lessors ("Lessor"), and United States Leasing Corporation, as agent for the Lessor. ACE has used the Units, located in Upper Deerfield Township, Cumberland County, New Jersey, for the generation of electricity for twenty five years. The Lease terminates on July 11, 1998 and ACE wishes to purchase the Units and continue them in service.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40085; International Series Release No. 1140; file No. SR-CBOE-98-17]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the Chicago Board Options Exchange, Incorporated Relating to Listing and Trading Warrants on a Narrow-Based Index

June 12, 1998.

#### I. Introduction

On April 23, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the proposed rule change to list and trade warrants on an equal dollar-weighted, narrow-based index ("Index"), comprised of 15 to 20 actively traded common stocks. The Exchange submitted Amendment No. 1 to the filing on April 30, 1998.<sup>3</sup> Notice

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

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

<sup>3</sup> See Letter from Stephanie C. Mullins, Attorney, CBOE to Martianne H. Duffy, Special Counsel, Division of Market Regulation ("Division"), SEC, dated April 30, 1998. Amendment No. 1 clarifies, among other things, that the Index, as defined above, is narrow-based and will comply with the

of the filing and Amendment No. 1 appeared in the **Federal Register** on May 13, 1998.<sup>4</sup> No comments were received concerning the proposed rule change. On June 11, 1998, the Exchange submitted Amendment No. 2.<sup>5</sup> This order approves the CBOE's proposal, as amended.

## II. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade warrants based on the Index, comprised of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the American Stock Exchange, Incorporated ("Amex"), New York Stock Exchange, Incorporated ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation ("Nasdaq") system and are reported national market system securities ("Nasdaq/NMS").

The Exchange is permitted to list and trade stock index warrants under CBOE Rule 31.5E. The Exchange now is proposing to list and trade cash-settled, stock index warrants linked to the

Index. At the time of listing and trading, the warrants will meet all of the generic criteria for stock index warrants as set forth in CBOE Rule 31.5E as well as the specific generic criteria for narrow-based index warrants discussed below.

Rule 31.5E requires, among other things, that: (1) the issuer has a tangible net worth in excess of \$150,000,000 and otherwise substantially exceeds earnings requirements in Rule 31.5(A)<sup>6</sup> or meet the alternate guideline in paragraph (4) of Rule 31.5E;<sup>7</sup> (2) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000; (3) the term of the warrants shall be for a period ranging from one to five years from date of issuance; (4) if 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States, the terms of the warrants provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (*i.e.* the settlement value at expiration); and (ii) the settlement value for the warrants as valued on either of the two business days preceding the day on which the final settlement value is to be determined; (5) all stock index warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted and that all unexercised warrants that are in the money (or in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange; (6) foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, shall not, in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading; and (7) the issuer of the warrants will make arrangements to

advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information itself. If any change in the number of warrants occurs, notice will be filed with the Exchange by 3:30 p.m. Chicago time, on the date when the settlement value for the Warrants is determined.

The generic criteria for narrow-based index warrants include, among other things, initial listing standards which state that: (1) each component security have a market capitalization of at least \$75 million, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market capitalization is at least \$50 million; (2) the trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months; (3) no single component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60%, for an index consisting of fewer than 25 component securities, of the weight of the Index; (4) at least 80% of the total number of component securities in an index satisfy the requirements of CBOE Rule 5.3<sup>8</sup> applicable to individual underlying securities; (5) U.S. component securities are "reported securities" as defined in Rule 11Aa3-1 under the Act; (6) the current underlying Index value will be reported at least once every fifteen seconds during the time the Index warrants are traded on the exchange; and (7) for maintenance purposes, the total number of component securities in the Index may not increase or decrease by more than 33 1/3% from the number of component securities in the Index at the time of its initial listing, and in no event may be less than nine component securities.<sup>9</sup>

generic narrow-based margin requirements (CBOE Rule 30.53) and position limit requirements (CBOE Rule 30.35) of the Exchange.

<sup>4</sup> Securities Exchange Act Release No. 39965 (May 6, 1998) 63 FR 26658.

<sup>5</sup> See Letter from Stephanie C. Mullins, Attorney, CBOE to Marianne H. Duffy, Special Counsel, Division, SEC, dated June 11, 1998. Amendment No. 2 clarifies that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depository receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depository receipt program be terminated, for any reason, after an American Depositary Receipt ("ADR") has already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.

<sup>6</sup> Rule 31.5A requires that an issuer's total assets less total liabilities are at least \$4,000,000, that pre-tax income earnings of at least \$750,000 in the issuer's last fiscal year or in two of the last three fiscal years and net income of at least \$400,000.

<sup>7</sup> Paragraph (4) of CBOE Rule 31.5E states that where an issuer has a minimum tangible net worth in excess of \$150,000,000, but less than \$250,000,000, the Exchange shall not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issue price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

<sup>8</sup> CBOE Rule 5.3 describes, among other things, the options eligibility requirements for individual equity securities.

<sup>9</sup> The Commission notes that the requirement of paragraph (7) may not be maintained in the following limited circumstances. The CBOE has represented that no attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to bankruptcy or similar circumstances.

### A. Index Design and Stock Selection Criteria

The Exchange represents that the Index will be categorized as narrow-based. The stocks to be included in the Index will be selected by a member firm of the Exchange and will be announced at or as close as possible to the time of the offering, and included in the issuer's offering materials. The Exchange represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than \$4,000,000; pre-tax income earnings were greater than \$750,000 in its last fiscal year; and the issuer's net income was greater than \$400,000), and the issuer has a minimum tangible net worth in excess of \$250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each component security of the Index will have a minimum market capitalization of \$150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than \$50 million.

### B. Calculation and Dissemination of the Index Value

The Index will be calculated using an equal dollar-weighting methodology designed to ensure that each of the component securities is represented in an approximately equal dollar amount in the Index. To create the Index, a portfolio of equity securities will be established by a member firm of the Exchange representing an investment of \$10,000 in each component security (rounded to the nearest whole share). The value of the Index will equal the market value of the sum of the assigned number of shares of each of the component securities divided by an Index divisor. The Index divisor initially will be set to provide a benchmark value of 100 at the time that

the warrants are priced for sale to the investing public.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security also may be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer, or the imposition of certain foreign taxes on shareholders of a foreign issuer.

The Exchange represents, that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index.<sup>10</sup> If the security remains in the Index, the number of shares of the security may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the divisor will be

adjusted, if necessary, to ensure continuity of the value of the Index.

The CBOE also represents that after the selection of the initial securities has been made, the CBOE, not the broker-dealer that initially will select the stocks, will decide all subsequent issues relating to the composition of the Index and/or the component securities.

Primary and backup pricing sources will be used to obtain prices for foreign stocks. All non-U.S. traded stocks will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's composite New York rates, or comparable rates, quoted at 2:00 p.m. Chicago time the previous day, will be used to convert any non-U.S. traded stock price from the respective countries to U.S. dollars. If there are several quotes, the first quoted rate in that minute will be used to calculate the Index. In the event that there is no Bloomberg exchange rate for a country's currency at 2:00 p.m. the previous day, stocks will be valued at the first U.S. dollar cross-rate quoted before 2:00 p.m. Chicago time the previous day.

As previously stated, the Index value will be calculated and disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value.<sup>11</sup>

### C. Index Warrant Trading (Exercise and Settlement)

The warrants will be direct obligations of their issuer, subject to cash-settlement in U.S. dollars and will be exercisable throughout their life (*i.e.*, American-Style).<sup>12</sup> Upon exercise, the holder of a Warrant structured as a "put" will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, upon exercise (or at the warrant expiration date in the case of warrants with European-style exercise), the holder of a Warrant structured as a "call" will receive payment in U.S. dollars to the extent that the value of the Index has increased above the pre-stated cash settlement value. Warrants that are "out-

<sup>10</sup> No attempt will be made to find a replacement stock or to otherwise compensate for a stock which is extinguished due to a bankruptcy or similar circumstances, *supra* note 9.

<sup>11</sup> See Amendment No. 2, *supra* footnote 5.

<sup>12</sup> Telephone conversation between Stephanie C. Mullins, Attorney, CBOE and Marianne H. Duffy, Special Counsel, June 12, 1998.

of-the-money'' at the time of expiration will expire worthless.

#### *D. Warrant Listing Standards and Customer Safeguards*

Sales practice rules applicable to the trading of index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The same suitability and use of discretion provisions that are applicable to transactions in options will be equally applicable to the warrants pursuant to CBOE rules. The listing and trading of index warrants on the Index will be subject to these guidelines and rules.

#### *E. Other Applicable Exchange Rules*

As previously stated, the CBOE represents that the Index will be categorized as narrow-based. As such, the generic narrow-based warrant standards regarding margin requirements provided for under Exchange rule 30.53 will apply. The applicable generic narrow-based position and exercise limits will be determined pursuant to Exchange rule 30.35.<sup>13</sup>

### **III. Commission Findings and Conclusions**

The Commission finds that the proposed rule change by the Exchange 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.<sup>14</sup> Specifically, the Commission finds that the listing and trading of warrants based on the Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with a portion of the equity markets<sup>15</sup> and

promote efficiency, competition and capital formation.<sup>16</sup>

Nevertheless, the trading of warrants on the Index raises several concerns related to the design and maintenance of the Index, customer protection, surveillance and market impact. The Commission believes, however, for the reasons discussed below, that the CBOE has adequately addressed these concerns.

#### *A. Design and Maintenance of the Index*

The Commission finds that it is appropriate and consistent with the Act for the CBOE to apply its narrow-based index warrant listing standards and trading rules to the Index. First, the Index will be composed of 15 to 20 actively traded common stocks, no more than four of which will be foreign issued and traded. The remaining stocks will be listed on the Amex, NYSE or through the facilities of Nasdaq and are reported Nasdaq/NMS securities.

The Commission notes that with respect to the maintenance of the Index, the CBOE has implemented several safeguards in connection with the listing and trading of Index warrants that will serve to ensure that the Index component securities are relatively highly capitalized and actively traded. In this regard, the CBOE represents that the Index and its component stocks will meet all the criteria of CBOE Rule 31.5E and the generic criteria for narrow-based index warrants, discussed above, prior to trading of the warrants. Particularly, the CBOE notes that with regard to paragraph (1) of CBOE Rule 31.5E, the net worth and earnings of the issuer substantially exceeds the criteria for equity issues of CBOE Rule 31.5A (*i.e.*, total assets less total liabilities are greater than \$4,000,000; pre-tax income earnings were greater than \$750,000 in its last fiscal year; and the issuer's net income was greater than \$400,000), and the issuer has a minimum tangible net worth in excess of \$250,000,000. As a result, the CBOE notes that paragraph (4) of CBOE Rule 31.5E regarding limitations on issuance is not applicable. In addition, the CBOE represents that with regard to paragraph (3) of CBOE Rule 31.5E, the warrants will mature between two to three years from the date of issuance. With regard to the generic criteria for narrow-based index warrants discussed above, the Exchange represents that each

respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

<sup>16</sup> 15 U.S.C. 78c(f).

component security of the Index will have a minimum market capitalization of \$150 million except that two component stocks that do not in the aggregate account for more than 10% of the Index weight, may have a market capitalization of not less than \$50 million.<sup>17</sup>

#### *B. Customer Protection*

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of Index warrants. Specifically, the applicable suitability, account approval, disclosure and compliance requirements of the CBOE warrant listing standards satisfactorily address potential concerns. Moreover, the CBOE plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Further, pursuant to the Exchange's listing guidelines, only companies capable of meeting the CBOE's index warrant issuer standards will be eligible to issue Index warrants. These standards, among other things, help to ensure that the issuer is sufficiently creditworthy to be able to meet its obligations at the expiration of the Index warrants.

#### *C. Surveillance*

In evaluating new derivative instruments, the Commission consistent with the protection of investors, considers the degree to which the derivative exchange has the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. It is for this reason that the Commission requires that there be a comprehensive surveillance agreement in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying stocks.<sup>18</sup> Such agreements facilitate the

<sup>17</sup> The Commission notes that the proposal does not contain a list of the actual components of the Index. The CBOE has committed to provide the list to the Commission, when it becomes publicly available, prior to the trading of the Index warrants. See Amendment No. 2, *supra* note 5.

<sup>18</sup> The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance agreement. A comprehensive surveillance agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a

<sup>13</sup> See Amendment No. 1, *supra* note 3.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with

availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In order to address the above concerns, the Commission notes that the Index will be maintained in accordance with CBOE Rule 31.5(E)(7), which states that foreign country securities or ADRs that are not subject to a comprehensive surveillance agreement and have less than 50% of their global trading volume in dollar value in the United States, cannot, in the aggregate, represent more than 20% of the weight of an index.

For the reasons discussed above, the Commission finds good cause to approve Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 provides that the Index value will be disseminated every 15 seconds and will be calculated based on real-time prices, for all of the component stocks, including those foreign stocks that are traded during CBOE trading hours. With respect to foreign stock components that trade during CBOE trading hours, each Index calculation will use the most recent last sale price from the appropriate home market. For foreign stocks that do not trade during CBOE trading hours, the closing price will be used to calculate the Index value. In addition, Amendment No. 2 clarifies that component securities will be replaced or supplemented only under the events discussed below. Absent unusual circumstances involving a merger or consolidation, conversion into another class of securities, a spin-off, or the termination of a depositary receipt program, the Exchange will adhere to the following procedures: (1) in the event of a merger or consolidation (whether between component stocks or between one component stock and one non-component stock), the original component stock will be replaced by the new security; (2) in the event of a conversion into another class of security, the original component stock will be replaced by the new security; (3) in the event of a spin-off of a subsidiary, both the subsidiary issue and the original parent security will be included

comprehensive surveillance agreement require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. See Securities Exchange Act Release No. 31529 (November 27, 1992).

in the Index, unless the subsidiary is an insignificant percentage of the original security, in which case the CBOE will consult with the SEC prior to omitting the subsidiary issuer from the Index; and (4) should a depositary receipt program be terminated, for any reason, after an ADR had already been included in the Index, the CBOE in consultation with the SEC staff will evaluate the appropriate procedure to be employed to ensure continuity of the Index. The Commission notes that no comments were received when the original notice of the proposed rule change was published and that no new regulatory issues are presented in Amendment No. 2.

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)<sup>19</sup> of the Act, to find good cause exists to approve Amendment No. 2 on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the proposed rule change is consistent with the Act. 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 Room, 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-98-17 and should be submitted by July 10, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade warrants based on the Index is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-98-17), as amended, is approved.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 98-16349 Filed 6-18-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40087; File No. SR-NASD-98-23]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule

June 12, 1998.

#### I. Introduction

On March 10, 1998, NASD Regulation, Inc. ("NASD Regulation") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 2860(b) of the National Association of Securities Dealers, Inc. ("NASD") or "Association") to: (1) increase the position limits on conventional equity options to three times the basic position limits for standardized equity options on the same security; (2) disaggregate conventional equity options from standardized equity options and FLEX Equity Options for position limit purposes; and (3) provide that the OTC Collar Aggregation Exemption shall be available with respect to an entire conventional equity options position, not just that portion of the position that is established pursuant to the NASD's Equity Option Hedge Exemption.

The proposed rule change was published for comment in Exchange Act Release No. 39893 (April 21, 1998), 63 FR 23317 (April 28, 1998) NASD Regulations submitted an amendment to the proposed rule change on April 29, 1998.<sup>3</sup> A second amendment to the

<sup>20</sup> 17 CFR 200.30-3(a)(12) (1994).

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

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, dated April 29, 1998 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the text of the proposed rule change.