

Dated: March 12, 2001.

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44046; File No. SR-CBOE-00-51]

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating To Adoption of Generic Listing Standards Applicable to Index Portfolio Receipts and Index Portfolio Shares Pursuant to Rule 19b-4(e) Under the Securities Exchange Act of 1934

March 7, 2001.

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> notice is hereby given that on October 26, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE filed Amendment Nos. 1<sup>3</sup> and 2<sup>4</sup> to the proposed rule change on

November 29, 2000, and February 28, 2001, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to amend its listing standards for Index Portfolio Receipts ("IPRs") (CBOE Rule 31.5L) and Index Portfolio Shares ("IPSS") (CBOE Rule 31.5M) to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of certain products pursuant to Rule 19b-4(e) under the Act.<sup>5</sup> The Exchange also proposes related amendments to CBOE's minimum increment rule (CBOE Rule 30.33) and hours of trading for non-option securities rule (CBOE Rule 30.4).<sup>6</sup> The text of the proposed rule change is available upon request from the Office of the Secretary, CBOE or 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 III below. The Exchange 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

###### 1. Purpose

The Exchange's listing standards for IPRs and IPSS are currently found in CBOE Rule 31.5.<sup>7</sup> These standards are

similar to those maintained by other exchanges.<sup>8</sup> The Exchange proposed to amend its current listing standards for IPRs and IPSS, contained in CBOE Rule 31.5, to provide standards that permit listing and trading, or trading pursuant to UTP, of various IPRs and IPSS products pursuant to Rule 19b-4(e) under the Act.<sup>9</sup> The Exchange believes that application of Rule 19b-4(e) to these securities will further the intent of that rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The Exchange believes that this new procedure has the potential to reduce the time frame for bringing these securities to market or for trading them pursuant to UTP.

###### 2. Generic Listing Criteria

The Exchange is proposing to implement generic listing criteria that are intended to ensure that a substantial portion of the weight of an index or portfolio underlying IPSS or IPRs is composed of securities with substantial market capitalization and trading volume. The proposed amendments to CBOE Rule 31.5 provide that the Exchange may approve for trading pursuant to Rule 19b-4(e) a series of IPRs or IPSS if the components that, in the aggregate, account for at least 90 percent of the weight of the underlying index or portfolio have a minimum market value of at least \$75 million. In addition, the component stocks representing at least 90 percent of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. Moreover, the most heavily weighted component stocks in an underlying index or portfolio cannot together exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks,<sup>10</sup> and all securities in an

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

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

<sup>3</sup> See Letter from Angelo Evangelou, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, dated November 28, 2000 ("Amendment No. 1"). Amendment No. 1 provides, among other things, amendments to CBOE's minimum increment rule (Rule 30.33) and hours of trading for non-option securities rule (Rule 30.4), as well as a technical correction and other minor changes to proposed CBOE Rules 31.5M and 31.5L.

<sup>4</sup> See Letter from Angelo Evangelou, Attorney, CBOE, to Florence Harmon, Senior Special Counsel, Division, SEC, dated February 26, 2001 ("Amendment No. 2"). Amendment No. 2 revises the proposal to: (1) Move certain disclosure-related language concerning IPSS from proposed CBOE Rule 31.5M.02 to a new proposed subparagraph (b) of CBOE Rule 30.56 clarifying that the disclosure provisions of that subparagraph are only applicable to a series of IPSS if, among other things, that series is not subject to prospectus delivery requirements under the Securities Act of 1933; (2) modify the rule text of CBOE's special provisions for IPRs rule (Rule 30.54) to clarify that the disclosure provisions of CBOE Rule 30.54 are only applicable to series of IPRs that are the subject of an SEC order exempting certain prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933; (3) add clarifying language to CBOE Rule 30.54(a) to make clear throughout that rule that IPRs may be based on an index or a portfolio; and (4) to amend CBOE Rule 30.54(b) to provide that the

written descriptive disclosure document required by this rule must be in a form approved by the CBOE or prepared by the unit investment trust issuing the subject IPRs.

<sup>5</sup> 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under section 19(b). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>7</sup> See Securities Exchange Act Release Nos. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998)

(approving SR-CBOE-97-38 relating to listing and trading of IPRs); and 42833 (May 26, 2000), 65 FR 35679 (June 5, 2000) (approving SR-CBOE-00-11 relating to listing and trading of IPSS).

<sup>8</sup> See American Stock Exchange ("Amex") Rules 1000 (Portfolio Depository Receipts) and 1000A (Index Fund Shares).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government

underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market). Finally, any series of IPSs or IPRs traded pursuant to generic listing standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.

Under the proposed amendments to CBOE Rule 31.5, the index underlying a series of IPRs or IPSs will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the underlying index is maintained by a broker-dealer, the broker-dealer must erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The hours during which IPR transactions may be made on the Exchange are 8:30 a.m. (Central Time ("CT")) until 3:15 p.m. (CT). The hours during which IPS transactions may be made on the Exchange are 8:30 a.m. (CT) until 3 p.m. or 3:15 p.m. (CT) for each series of IPSs, as specified by the Exchange.

The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network B.<sup>11</sup> Additionally, the Reporting Authority must disseminate for each series of IPSs or IPRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of IPSs or IPRs must be outstanding at the time trading begins. The Exchange represents that it believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum trading variation for IPRs is currently  $\frac{1}{64}$  of \$1.00 is such securities are trading in fractions. The minimum trading variation for IPSs is proposed to be  $\frac{1}{16}$ ,  $\frac{1}{32}$ , or  $\frac{1}{64}$  of \$1.00, as

designated by the Exchange, for IPSs trading in fractions.<sup>12</sup>

The Exchange will implement written surveillance procedures for the IPRs and the IPSs that it trades pursuant to Rule 19b-4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b-4(e), and will file Form 19b-4(e) for each series of IPSs or IPRs within five business days of commencement of trading.<sup>13</sup>

In addition to the requirements of proposed CBOE Rules 31.5L (for IPRs) and 31.5M (for IPSs), all series of IPRs and IPSs listed under Rule 19b-4(e) will be subject to Exchange procedures and rules comparable to those applied to existing IPRs and IPSs.<sup>14</sup>

Further, the Exchange will issue an informational circular to its members and members organizations for each series to be listed pursuant to Rule 19b-4(e). The circular will describe the characteristics of the securities and will inform members or members organizations of any obligation to deliver a written product description prospectus, as applicable, to purchasers of IPSs or IPRs. In addition, the circular will inform members or members organizations that all series of IPRs and IPSs listed under Rule 19b-4(e) will be subject to Exchange procedures and rules comparable to those applied to existing IPRs and IPSs.

The proposal also requires members and member organizations to provide purchasers of a series of IPSs with a product description of the terms and characteristics of such securities in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to the purchaser. This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of section 24(d) of the Investment Company Act of 1940,<sup>15</sup>

and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.<sup>16</sup> Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of IPSs that are provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of IPSs must include a statement relating to the product description, in substantially the form set forth in the proposed amendment to CBOE Rule 31.5M.

The proposal also provides that a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of IPSs for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under the proposed amendment to CBOE Rule 31.5M. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of IPSs upon the customer's request.<sup>17</sup>

Further, the proposal also clarifies that members and member organizations must provide to all purchasers of a series of IPRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange or prepared by the unit investment trust issuing such securities.<sup>18</sup> This requirement applies only if the particular IPR series has been granted relief from the prospectus delivery requirements of section 24(d) of the Investment Company Act of 1940,<sup>19</sup> and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.<sup>20</sup>

### 3. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>21</sup> in general, and in particular, with section 6(b)(5),<sup>22</sup> in that it is designed to promote just and equitable principles of trade, to remove

<sup>16</sup> See Amendment No. 2, *supra* note 4.

<sup>17</sup> The Commission notes that current CBOE Rule 30.54(b) requires its members and member organizations to provide to all purchasers of a series of IPRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange.

<sup>18</sup> See Amendment No. 2, *Supra* note 4.

<sup>19</sup> 15 U.S.C. 80a-24(d).

<sup>20</sup> See Amendment No. 2, *supra* note 4.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

<sup>11</sup> The CBOE represents that it understands that the information described in this section will be disseminated by or through the primary exchange or another entity working with that exchange.

<sup>12</sup> See Amendment No. 1, *supra* note 3. The Commission also notes that the minimum trading increments for IPRs and IPSs are currently \$0.01 is such securities are trading in decimals.

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See CBOE Rules 1.102 ("Definitions"), 30.10 ("Units of Trading"), 30.33.01 (relating to minimum trading increment), 30.36 ("Trading Halts or Suspensions"), 30.54 ("Special Provisions for IPRs"), 30.55 ("Limitation on Reporting Authorities' Liability"), 31.5 ("Criteria for Original Listing"), and 31.94 ("Suspension and Delisting") for existing procedures and rules relating to IPRs; and see CBOE Rules 1.103 ("Definitions"), 30.10 ("Units of Trading"), 30.33.01 (relating to minimum trading increment), 30.36 ("Trading Halts or Suspensions"), 30.55 ("Limitation on Reporting Authorities' Liability"), 30.56 ("Special Provisions for IPSs"), 31.5 ("Criteria for Original Listing"), and 31.94 ("Suspension and Delisting") for existing procedures and rules relating to IPSs.

<sup>15</sup> 15 U.S.C. 80a-24(d).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *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. The CBOE believes that the proposed rule change will encourage competition among markets by allowing more than one exchange to list and trade the products described in the proposed rule change pursuant to Rule 19b-4(e).

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

The Exchange did not receive any written comments on the proposed rule change.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-00-51 and should be submitted by April 5, 2001.

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

After careful consideration, 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)(5) of the Act.<sup>23</sup> Specifically, the Commission finds that the CBOE proposal to establish generic listing standards to permit the listing and trading of IPRs and IPSs pursuant to Rule 19b-4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under section 19(b) of the Act. Thus, by establishing generic listing standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.<sup>24</sup>

In general, IPRs represent interests in a unit investment trust that holds securities which comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus.

IPs represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities.

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.<sup>25</sup>

As noted above, the Commission has previously approved CBOE Rule 31.5 that permit the listing and trading of IPRs (*see* Rule 31.5L) and IPSs (*See* Rule

31.5M). In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the CBOE rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b-4 for each of the series of IPSs or IPRs currently trading on the Exchange.

The Commission's approval of the proposed generic listing standards for these securities will allow those series of IPRs and IPSs that satisfy those standards to start trading under Rule 19b-4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic listing standards through regular inspection oversight.

The Commission previously concluded that IPRs and IPSs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.<sup>26</sup> The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic listing standards for IPRs and IPSs should produce the same benefits to investors.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of IPRs and IPSs under Rule 19b-4(e). All series of IPRs and IPSs listed under the generic standards will be subject to the full panoply of CBOE rules and procedures that now govern the trading of existing IPRs and IPSs on the Exchange or pursuant to UTP. Accordingly, any new series of IPRs and IPSs listed and traded under Rule 19b-4(e) will be subject to CBOE rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> *Id.* In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>25</sup> *See supra* note 5.

<sup>26</sup> *See* Securities Exchange Act Release Nos. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approving SR-Amex-00-14); and 42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (approving SR-CHX-00-14).

suitability requirements, the election of a stop or limit order, and margin.

In addition, the CBOE has developed specific listing criteria for series of IPRs or IPSs qualifying for Rule 19b-4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of IPRs or IPSs is outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the IPSs and IPRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with section 6(b)(5) of the Act.<sup>27</sup>

In addition, as previously noted, all series of IPRs and IPSs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the CBOE to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the CBOE flexibility to delist IPRs or IPSs if circumstances warrant such action.

Furthermore, the Commission notes that the Exchange currently trades IPRs in minimum trading increments of  $\frac{1}{64}$  of \$1.00 if such securities are trading in fractions. The Commission finds that the Exchange's proposal to trade IPSs in increments of  $\frac{1}{16}$ ,  $\frac{1}{32}$ , or  $\frac{1}{64}$  of \$1.00, as designated by the Exchange, for IPSs trading in fractions, is also consistent with the Act.<sup>28</sup> The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the IPRs or IPSs, thereby protecting customers and the public interest

consistent with section 6(b)(5) of the Act.<sup>29</sup>

Further, the Commission believes that the hours of trading proposed for both IPRs and IPSs transactions are reasonable, as they are identical to existing rules recently adopted by the Ames.<sup>30</sup>

The Exchange represents that the Reporting Authority will disseminate for each series of IPRs or IPSs an estimate, updated every 15 seconds, of the value of a share of each series. The Exchange further represents that the information that is reported will be disseminated by or through the primary exchange or another entity working with that exchange, when the CBOE trades one of these products pursuant to UTP. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The CBOE has developed surveillance procedures for IPRs and IPSs listed under the generic standards that incorporate and rely upon existing CBOE surveillance procedures governing IPRs, IPSs, and equities (that are non-options). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading IPRs and IPSs under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.<sup>31</sup> The Exchange further represents that it will file Form 19b-4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b-4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as IPRs or IPSs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address

concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading IPSs. Members and member organizations will be required to provide to all purchasers of IPSs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by a customer. The proposal also requires a member or member organization carrying an omnibus account for a non-member broker-dealer, to notify the non-member that execution of an order to purchase an IPR or IPS constitutes an agreement by the non-member to provide the product description to its customers.

The Commission notes that investors may acquire similar information for IPRs under existing CBOE Rule 30.54. The Commission believes that it is reasonable for the proposal to clarify that a written description of the terms and characteristics of an IPR series may either be prepared by an SRO or a unit investment trust that issues such securities. The Commission believes that the clarification is reasonable and necessary since an entity, other than an SRO, may be an issuer of an IPR series. The Commission further believes that it is reasonable to clarify that members and member organizations may provide purchasers of a series of IPRs with a product description, describing the terms and characteristics of such securities, instead of a prospectus, only if the particular series has been granted relief from the prospectus delivery requirements of section 24(d) of the Investment Company Act of 1940, and when the Securities Act of 1933 does not require prospectus delivery. The Commission believes that this clarification is necessary to emphasize that an exemption from a prospectus delivery requirements under section 24(d) of the Investment Company Act of 1940 does not provide any relief from prospectus delivery requirements under the Securities Act of 1933.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any IPRs or IPSs under the generic standards, the Exchange will issue an information circular to its

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> The Commission notes that the minimum trading increments for IPRs and IPSs are \$0.01, if such securities are trading in decimals pursuant to CBOE Rule 30.33.01.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> See *supra* note 26.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

members and members organizations explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of IPRs or IPSs. The circular also will inform CBOE members and members organizations that in addition to the requirements of amended CBOE Rules 31.5L (for IPRs) and 31.5M (for IPSs), IPR and IPSs will be subject to Exchange procedures and rules comparable to those applied to existing IPRs and IPSs. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series of IPR or IPS and is consistent with section 6(b)(5) of the Act.<sup>32</sup>

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.<sup>33</sup> Because the proposed rule change, as amended, conform the CBOE's rules to existing rules recently adopted by the Amex and the Chicago Stock Exchange,<sup>34</sup> the proposed rule change raises no new material regulatory issues. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,<sup>35</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-CBOE-00-51) and Amendment Nos. 1 and 2 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>37</sup>

**Margaret H. McFarland,**

*Deputy Secretary*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44045; File No. SR-CBOE-00-37]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 Thereto by the Chicago Board Options Exchange, Inc. Amending the Minor Rule Violation Plan

March 7, 2001.

#### I. Introduction

On August 11, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with 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 relating to the reporting of options transactions and amending the Exchange's minor rule violation plan. The CBOE filed Amendment No. 1 to the proposed rule change on August 23, 2000.<sup>3</sup> On September 6, 2000, the CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The **Federal Register** published the proposed rule change for comment on September 25, 2000, and the same time the Commission approved on an accelerated basis the portion of the proposal that amended CBOE Rule 6.51 relating to the reporting of trades.<sup>5</sup> The Commission received no comments on the proposal amending the CBOE's minor rule violation plan.

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

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

<sup>3</sup> See letter from Jamie Galvan, Attorney, Legal Division, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated August 22, 2000 ("Amendment No. 1"). Amendment No. 1 moves certain proposed language from Interpretation and Policy .01 of CBOE Rule 6.51 to the body of Rule 6.51 to confirm that a member's failure to report an options transaction within 90 seconds would be considered a violation of proposed CBOE Rule 6.51. Amendment No. 1 also requests accelerated approval of the portion of the proposal that amended CBOE Rule 6.51.

<sup>4</sup> See letter from Jamie Galvan, Attorney, Legal Division, CBOE, to Deborah Flynn, Senior Special Counsel, Division, Commission, dated September 5, 2000 ("Amendment No. 2"). In Amendment No. 2, the CBOE confirmed that the failure to report an options transaction within 90 seconds of execution would be considered a violation of CBOE Rule 6.51. Amendment No. 2 also deletes footnote 5 to Exhibit 1, which defined the term "offense" for purposes of CBOE Rule 17.50(g)(4) as the first instance that a pattern or practice of late reporting or failure to report has been determined. In Amendment No. 2, the Exchange proposes to add a similar footnote to the text of CBOE Rule 17.50(g)(4).

<sup>5</sup> Securities Exchange Act Release No. 43250 (Sept. 6, 2000), 65 FR 57636.

The Exchange filed Amendment Nos. 3<sup>6</sup> and 4<sup>7</sup> to the proposed rule change on October 25, 2000 and February 23, 2001, respectively. This order approves the portion of the proposal, as amended, relating to the CBOE's minor rule violation plan, and solicits comments on Amendment Nos. 3 and 4.

#### II. Description of Proposal

The proposal would revise CBOE Rule 17.50 to consolidate the failure to submit accurate trade information under CBOE Rule 17.50(g)(4) and the failure to submit trade information to the price reporter under CBOE Rule 17.50(g)(5). The Exchange also proposes to eliminate Interpretation and Policy .02 of CBOE Rule 17.50, because under the proposed rule change, the surveillance for late trade reports would be conducted pursuant to Interpretation and Policy .01 of CBOE Rule 6.51.

Moreover, the proposal would revise the time period within which a member served with a written statement pursuant to CBOE Rule 17.50(b) could request verification of the fine to fifteen days after the date of service of the written statement. The proposal would also require the Exchange to attempt to serve members with a written statement within the month immediately following the month in which the alleged violations occurred.

The Exchange also proposes to amend CBOE Rule 17.50(b) by deleting the requirement that the Exchange contemporaneously send a copy of the written statement served on members fined pursuant to CBOE Rule 17.50 to the clearing member previously designated by the member pursuant to CBOE Rule 3.23.

Finally, the Exchange proposes to issue a Regulatory Circular to its membership notifying members that they could not defend against a fine imposed pursuant to CBOE Rule 17.50(g)(4) by claiming that a transaction time was inaccurately keypunched because an order ticket was

<sup>6</sup> See letter from Jamie Galvan, Attorney, Legal Division, CBOE, to Deborah Flynn, Senior Special Counsel, Division, Commission, dated October 24, 2000 ("Amendment No. 3"). Amendment No. 3 proposes to reserve paragraph (g)(5) of Rule 17.50 and renumbers various provisions of the rule accordingly.

<sup>7</sup> See letter from Jamie Galvan, Attorney, Legal Division, CBOE, to Deborah Flynn, Senior Special Counsel, Division, Commission, dated February 22, 2001 ("Amendment No. 4"). Amendment No. 4 withdraws proposed amendments to CBOE Rule 17.50(g)(4)(a) to increase the fine levels for failures to submit trade information on time and to increase the time frames used for determining fine amounts for multiple violations. Amendment No. 4 also withdraws the proposed policy that market makers who do not use hand held terminals may not request verification of fines imposed under CBOE Rule 17.50(g)(4).

<sup>32</sup> *Id.*

<sup>33</sup> 15 U.S.C. 78s(b)(1).

<sup>34</sup> See *supra* note 26.

<sup>35</sup> 15 U.S.C. 78s(b)(5).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).