

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

1. Purpose

The purpose of the proposed rule change is to amend the Trade Recording and Comparison Fee Schedule to reduce the rate charged for non-specialist trades executed by a floor broker on another exchange and then transferred into an account at the Exchange for clearing purposes. Because the floor broker is simply facilitating the clearance of the trade at the Exchange, his side of the trade will be reduced to a flat \$0.05 per 100 shares from the current volume based rates he currently incurs. This change will more accurately reflect the cost of executing different types of business through the Exchange facilities and systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5)<sup>4</sup> of the Act, in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

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

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

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

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to

<sup>4</sup> 15 U.S.C. 78f(b)(5).

Section 19(b)(3)(A)<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>6</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>7</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing, 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, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of BSE. All submissions should refer to File No. SR-BSE-99-2 and should be submitted by March 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41112; File No. SR-CBOE-99-05]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Listing of Options on the Dow Jones E\* Commerce Index**

February 25, 1999.

**I. Introduction**

On January 28, 1999, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), submitted to the Securities Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the listing and trading of options on the Dow Jones E\*Commerce Index, ("E\*Commerce Index" or "Index") a narrow-based index designed by Dow Jones & Company, Inc. ("Dow Jones TM").<sup>3</sup> The Commission published the proposed rule change for comment in the **Federal Register** on February 4, 1999.<sup>4</sup> No comments were received. On February 17, 1999, the CBOE submitted Amendment No. 1 to the proposed rule.<sup>5</sup> This order approves the proposed rule change on an accelerated basis and also Amendment No. 1 on an accelerated basis.

**II. Description of the Proposal**

*A. Index Design*

The E\*Commerce Index has been designed to measure the performance of certain Internet commerce stocks. All of the stocks in the Index are U.S.

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

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

<sup>3</sup> Dow Jones & Company, Inc. ("Dow Jones") has licensed "Dow Jones™," and "Dow Jones E\*Commerce Index" for use for certain purposes to the Chicago Board Options Exchange, Incorporated. CBOE's options based on the Dow Jones E\*Commerce Index are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such products.

<sup>4</sup> Securities Exchange Act Release No. 40995 (January 28, 1999) 64 FR 5693 (February 4, 1999).

<sup>5</sup> Amendment No. 1 clarifies that the base date for the Dow Jones E\*Commerce Index has been changed to June 30, 1998. The index level on that date was set to 100.00. Based on this adjustment, the index level on January 21, 1999 was 233.75. See letter from William M. Speth, Research and Planning, CBOE to Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC, dated February 17, 1999.

securities and currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System ("Nasdaq") and are reported national market system securities. In addition, all of the stocks are "reported securities" as defined in Rule 11Aa3-1 under the Exchange Act. The Exchange seeks to list and trade cash-settled, European-style stock index options on the Dow Jones E\*Commerce Index. The Index is a modified capitalization-weighted index of 15 of the largest, most liquid U.S. Internet commerce stocks. Internet commerce companies are involved in providing a good or service through an open network such as the Internet.

The Exchange represents that in all but one respect, options on the E\*Commerce Index meet the generic listing criteria for options on narrow-based indexes which may be filed with the Commission under Exchange Rule 24.2(b) as a stated policy, practice, or interpretation within the meaning of paragraph (3)(A) of section 19(b) of the Exchange Act. The only variation is that the Index is calculated using a modified capitalization-weighting methodology.

Each of the stocks in the E\*Commerce Index has a market capitalization in excess of \$75 million. Specifically, the stocks comprising the Index range in capitalization from \$378.9 million to \$26.15 billion as of January 21, 1999. The total capitalization as of that date was \$76.50 billion. The mean capitalization was \$5.10 billion. The median capitalization was \$1.94 billion.

The CBOE indicated in its filing that all but two of the component stocks met the trading volume criteria set forth in paragraph (b)(3) of CBOE Rule 24.2. E-Bay, Inc. did not meet the criteria of CBOE Rule 24.2(b)(e) because it was the subject of an initial public offering on September 24, 1998. Since that time, however, E-Bay, Inc. has exceeded the trading volume criteria.<sup>6</sup> Ticketmaster On-line CitySearch does not meet the volume criteria because it was the subject of a spin-off on December 3, 1998. However, the Exchange represents that the company currently satisfies the requirements of CBOE Rule 5.3 applicable to individual underlying securities and is the subject of options trading. Furthermore, since the company was spun off, it has averaged 1.51 million shares per day. The Exchange represents that each of the component stocks in the E\*Commerce Index has had monthly trading volume

in excess of one million shares over the six month period through January 1999. The average monthly volume over the six-month period for the stocks in the Index ranged from a low of 8.3 million shares to a high of 292.5 million shares. Consequently, all of the fifteen stocks in the Index are eligible for individual options trading pursuant to CBOE Rule 5.3.

As of the initial re-balancing on January 4, 1999, the largest stock accounted for 10.00% of the total weight of the Index, while the smallest accounted for 1.43%. The top five stocks in the Index accounted for 50.00% of the total weight of the Index. Accordingly, the Exchange's generic listing standards for narrow based indexes are more than met with respect to the criteria of market capitalization, weighting constraints and trading volume.

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

The E\*Commerce Index is calculated on a "modified capitalization-weighted" method. This method is a hybrid between equal weighting (which may pose liquidity concerns for smaller-cap stocks) and normal-cap weighting (which may result in two or three stocks dominating the index's performance). Under this method, the maximum weight for any stock in the Index will be set to 10%, or "capped," on the quarterly rebalancing date. The weight of all the remaining stocks shall be market capitalization weighted. Thus, the weights of these remaining stocks are not "capped."

For stocks which are not "capped," index shares will equal the company's outstanding common shares. For stocks that are "capped," index shares will equal their maximum weight, multiplied by the adjusted total market capitalization of the Index, divided by the stock's closing price on the rebalancing date. The index's adjusted total market capitalization is the total outstanding market capitalization adjusted to reflect the combined weight of all of the "capped" stocks.

The level of the Index reflects the adjusted total capitalization of the component stocks divided by the Index Divisor. The Index divisor was initially calculated to yield a benchmark level of 100 at the close of trading on June 30, 1998. Based on this adjustment, the index level on January 21, 1999 was 233.75.<sup>7</sup> The Index divisor will be adjusted as needed to ensure continuity whenever there are additions or deletions from an index, share changes,

or adjustments to a component's price to reflect rights offerings, spin-offs and special cash dividends.

The values of the Index will be calculated by Dow Jones or its designee and will be disseminated to market information vendors at 15-second intervals during regular CBOE trading hours via the Options Price Reporting Authority or the Consolidated Tape Association. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation.

#### *C. Index Maintenance*

The CBOE represents that Dow Jones is responsible for maintenance of the E\*Commerce Index. Index maintenance generally includes monitoring and completing the adjustments for company additions and deletions, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to company restructuring or spin-offs. If required, the Index Divisor will be adjusted to account for any of the above changes.

The Exchange represents that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.

If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

#### *D. Index Option Trading*

In addition to regular Index options, the Exchange may provide for the listing of long-term index option series ("LEAPS<sup>®</sup>") and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth. Exhibit C to File No. SR-CBOE-99-05 presents proposed contract specifications for the E\*Commerce Index options.

<sup>6</sup> Telephone call between Eileen Smith, Research and Planning, CBOE and Katherine A. England, Assistant Director, Division of Market Regulation, SEC on February 25, 1999.

<sup>7</sup> See Amendment No. 1, supra note 1.

Strike prices will be set to bracket the index in a minimum of 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below \$3 will be 1/16 and for series trading above \$3 the minimum tick will be 1/8. The trading hours for options on the Index will be from 8:30 a.m. to 3:02 p.m. Chicago time.

#### *E. Exercise and Settlement*

The CBOE proposes that options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:02 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by Dow Jones or its designee based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index, as is done for currently listed indexes. When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

#### *F. Surveillance and Position Limits*

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS. Options on the E\*Commerce Index would be subject to the position limits for industry index options set forth in CBOE Rule 24.4A.

#### *G. Exchange Rules Applicable*

The Rules in Chapter XXIV will be applicable to options on the E\*Commerce Index. Narrow-based margin rules will apply to the Index as set forth in CBOE Rule 24.11.

#### *H. Capacity*

CBOE believes it has the necessary systems capacity to support new series that would result from the introduction of options on the E\*Commerce Index. CBOE has also been informed that the Options Price Reporting Authority ("OPRA") also has the capacity to support the new series.

### **III. Discussion**

The Commission finds that proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular. Specifically, the Commission finds that the trading of options based on the E\*Commerce Index, including LEAPS and reduced value LEAPS, will serve to promote the public interest as well as to help remove impediments to a free and open securities market. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Index options will provide investors with an important trading and hedging mechanism.<sup>10</sup> By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the E\*Commerce Index will serve to protect investors and contribute to the maintenance of fair and orderly markets.<sup>11</sup>

Nevertheless, the trading of options on the E\*Commerce Index raises several issues related to the design and structure of the Index, customer protection, surveillance, and market impact. The Commission, however, believes that the CBOE has adequately addressed these issues.

#### *A. Index Design and Structure*

The Commission believes that it is appropriate for the CBOE to designate the Index as narrow-based for purposes of index option trading. First, the E\*Commerce Index has been designed to measure the performance of certain Internet commerce stocks. The Index is a modified capitalization-weighted index of 15 of the largest, most liquid U.S. Internet commerce stocks. Internet commerce companies are involved in

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</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 respect to a product 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. In this regard, the trading of listed Index options will provide investors with a hedging vehicle that should reflect the overall market of Internet commerce stocks.

<sup>11</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

providing a good or service through an open network such as the Internet.

Second, all of the stocks in the Index are U.S. securities and currently trade through the facilities of the Nasdaq and are reported national market system securities. In addition, all of the stocks are "reported securities" as defined in Rule 11Aa3-1 under the Exchange Act. The CBOE indicated in its filing that all but two of the component stocks met the trading volume criteria set forth in paragraph (b)(3) of CBOE Rule 24.2. E-Bay, Inc. did not meet the criteria of CBOE Rule 24.2(b)(e) because it was the subject of an initial public offering on September 24, 1998. E-Bay, Inc., however, met the criteria of CBOE Rule 24.2(b)(e) in February 1999. Ticketmaster On-line CitySearch does not meet the volume criteria because it was the subject of a spin-off on December 3, 1998. However, the Exchange represents that the company currently satisfies the requirements of CBOE Rule 5.3 applicable to individual underlying securities and is the subject of options trading. Furthermore, since the company was spun off, it has averaged 1.51 million shares per day. The Exchange represents that each of the component stocks in the E\*Commerce Index has had monthly trading volume in excess of one million shares over the six month period through January 1999. The average monthly volume over the six-month period for the stocks in the Index ranged from a low of 8.3 million shares to a high of 292.5 million shares. Consequently, all of the fifteen stocks in the Index are eligible for options trading.

The Exchange also represents that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.<sup>12</sup>

<sup>12</sup> The Exchange's option listing standards, contained in CBOE Rule 5.3, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: the public float must be at least 7 million shares; there must be a minimum of 2,000 stockholders; trading volume must have been at least 2.4 million shares over the preceding twelve months; and the market price per share must have been at least \$7.50 for a majority of business days during the preceding three calendar months.

Third, the Exchange represents that in all but one respect, options on the E\*Commerce Index meet the generic listing criteria for options on narrow-based indexes which may be filed with the Commission under Exchange Rule 24.2(b) as a stated policy, practice, or interpretation within the meaning of paragraph (3)(A) of subsection 19(b) of the Exchange Act. The only variation is that the Index is calculated using a modified capitalization-weighting methodology.

#### B. Potential for Manipulation

The Commission also believes that the capitalization and weighting methodology of the index and the depth and liquidity of the securities comprising the Index significantly minimize the potential for manipulation of the Index. First, the Commission notes that the Index is a modified capitalization-weighted index whose value is more difficult to affect than that of a price-weighted index. Second, the CBOE has represented that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.

If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.<sup>13</sup>

Third, the Exchange has proposed reasonable position and exercise limits for the index options that will serve to minimize potential manipulation and other market concerns. Accordingly, the Commission believes that these factors minimize the potential for manipulation because it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value. Moreover, the surveillance procedures discussed below should detect, as well as deter,

<sup>13</sup> If the composition of the Index was to substantially change, the Commission may reevaluate its decision regarding the appropriateness of the Index's current maintenance standards and may consider whether additional approval under Section 19(b) of the Exchange Act is necessary to continue to trade the Index options.

potential manipulation and other trading abuses.

#### C. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Index, including LEAPS and reduced-value LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized, exchange-traded options occur in an environment that is designed to ensure, among other things, that: the special risks of options are disclosed to public customers; only investors capable of evaluating the bearing the risks of options trading are engaged in such trading; and special compliance procedures are applicable to options accounts. Accordingly, because the Index options, including LEAPS and reduced-value LEAPS, will be subject to the same regulatory regime as other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure protection of investors in options on the Index.

#### D. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.<sup>14</sup> In this regard, the CBOE and the market upon which all of the Index component stocks trade, Nasdaq, through the National Association of Securities Dealers, Inc., are members of the Intermarket Surveillance Group. In addition, the Exchange will apply the same surveillance procedures as those used for existing narrow-based index option trading on the CBOE. Furthermore, Dow Jones & Company also has a policy in place to prevent the potential misuse of material, non-public information by members of Wall Street Journal managerial and editorial staff in

<sup>14</sup> See e.g., Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (order approving the listing and trading of options on the CBOE Biotech Index).

connection with maintenance of the Index.

#### E. Market Impact

The Commission believes that the listing and trading of options, including LEAPS and reduced-value LEAPS, on the Index will not adversely affect the underlying securities markets.<sup>15</sup> First, as described above, the Index is narrow-based and comprised of 15 stocks, with no one stock dominating the Index. Second, the Exchange has proposed reasonable position and exercise limits for the index options that will serve to minimize potential manipulation and other market concerns. Third, currently, all Index components are eligible for options trading under CBOE rule 5.3 and the CBOE has represented that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10. Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3. If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.<sup>16</sup>

Fourth, the risk to investors of contra-party one-performance will be minimized because the Index options, LEAPS, and reduced-value LEAPS will be issued and guaranteed by the Options Clearing Corporation, similar to all other standardized options traded in the United States. Lastly, the Commission believes that settling expiring options based on the opening prices of component securities is reasonable and consistent with the Exchange Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than on closing prices may help reduce the adverse effects on markets for stock underlying options on the Index.<sup>17</sup>

<sup>15</sup> In addition, the CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options.

<sup>16</sup> See note 13, supra.

<sup>17</sup> See, e.g., Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving position limits for European-style Standard & Poor's 500 Stock Index options settled

### F. Accelerated Approval of Proposed Rule Change and Amendment No. 1

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. First, the Commission notes that no comments were received on the original proposal, which was subject to the full 21-day notice and comment period. Second, the Commission believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. The Commission also believes that the Index options will provide investors with an important trading and hedging mechanism.<sup>18</sup> Finally, the Commission believes that the trading of options on the E\*Commerce Index will serve to broaden the hedging and investment opportunities of investors.

With respect to Amendment No. 1, the Commission notes that Amendment No. 1 does not change, but rather clarifies, the proposed rule change, and thus does not raise any new regulatory issues.<sup>19</sup> Specifically, Amendment No. 1 clarifies that the base date for the E\*Commerce Index has been changed to June 30, 1998. The index level on that date was set to 100.00. Based on this adjustment, the index level on January 21, 1999 was 233.75.<sup>20</sup>

Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2)<sup>21</sup> of the Act to approve the proposed rule change, and Amendment No. thereto, on an accelerated basis.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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. 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

based on the opening prices of component securities).

<sup>18</sup> See note 10, supra.

<sup>19</sup> See note 5, supra.

<sup>20</sup> In the original proposal the Index divisor was initially calculated to yield a benchmark level of 200.00 at the close of trading on January 4, 1999 with the Index having a closing level of 259.43 on January 21, 1999.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

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, NW, Washington, DC 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 number SR-CBOE-99-05 in the caption above and should be submitted by March 25, 1999.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-99-05), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release 34-41103; International Series Release No. 1185; File No. 600-20]

#### Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

February 24, 1999.

Notice is hereby given that on February 1, 1999, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> requesting that the Commission extend ISCC's temporary registration as a clearing agency for one year.<sup>2</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to extend ISCC's temporary registration as a clearing agency until February 29, 2000.

On May 12, 1989, pursuant to Sections 17A(b) and 19(a) of the Act<sup>3</sup> and rule 17Ab2-1 promulgated

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Letter from Julie Beyers, Vice President and Associate Counsel, ISCC (January 28, 1999).

<sup>3</sup> 15 U.S.C. 78q-1(b) and 78s(a).

thereunder,<sup>4</sup> the Commission granted ISCC's application for registration as a clearing agency for a period of eighteen months.<sup>5</sup> Since that time, the Commission has extended ISCC's temporary registration through February 28, 1999.<sup>6</sup>

ISCC was created to provide safe and efficient clearance and settlement of securities transactions between United States broker-dealers and foreign financial institutions. ISCC serves this function through its Global Clearance Network service and through its settlement links with foreign clearing entities such as the Euroclear system, which is operated by the Brussels Office of Morgan Guaranty Trust Company of New York.<sup>7</sup>

As part of ISCC's temporary registration, the Commission granted ISCC a temporary exemption from compliance with Section 17A(b)(3)(C) of the Act,<sup>8</sup> which requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The Commission granted this temporary exemption due to ISCC's limited participant base. In July 1997, the Commission approved ISCC's new structure for matters relating to its corporate governance.<sup>9</sup> The Commission concluded that these changes were consistent with ISCC's obligation to provide fair representation to its participants and eliminated its exemption from Section 17A(b)(3)(C) of the Act. However, due to internal reorganization considerations, the changes were not implemented. Accordingly, ISCC has requested that the Commission reinstate its exemption from the fair representation requirements.

Because ISCC has not yet implemented its new structure, the Commission is reinstating ISCC's temporary exemption from the fair representation requirements of Section

<sup>4</sup> 17 CFR 240.17Ab2-1.

<sup>5</sup> Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

<sup>6</sup> Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; 30005 (November 27, 1991), 56 FR 63747; 33233 (November 22, 1993), 58 FR 63195; 36529 (November 29, 1995), 60 FR 62511; 37986 (November 25, 1996), 61 FR 64184; 38703 (May 30, 1997), 62 FR 31183; and 39700 (February 26, 1998) 63 FR 10669.

<sup>7</sup> Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960 (order approving ISCC's Global Clearance Network service) and 32564 (June 30, 1993), 58 FR 36722 (order approving linkage with Euroclear).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>9</sup> Securities Exchange Act Release No. 38846 (July 17, 1997), 62 FR 39562.