

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42975; File No. SR-CHX-00-14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Investment Company Units Pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934

June 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 3, 2000, the Chicago Stock Exchange, Inc. ("CHX" 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 CHX filed Amendment No. 1 to the proposed rule change on May 5, 2000.³ 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 Investment Company Units ("ICUs") (CHX Article XXVIII, Rule 24) and Portfolio Depository Receipts ("PDRs") (CHX Article XXVIII, Rule 25) 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.⁴ The Exchange also

proposes related amendments to CHX Article XX, Rule 22, its minimum trading variation rule. The text of the proposed rule change is available upon request from the Office of the Secretary, CHX 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 CHX 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 section 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 currently trades a number of securities pursuant to UTP under its listing standards for ICUs and PDRs.⁵ These standards, found in CHX Article XXVIII, Rule 24 and Rule 25, are similar to those maintained by other exchanges.⁶ The Exchange's proposed amendments to CHX Article XXVIII, Rules 24 and 25 would permit it to list and trade ICUs and PDRs pursuant to Rule 19b-4(e) under the Act.⁷ 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 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 ICUs or PDRs is

(December 8, 1998), 63 FR 70952 (December 22, 1998).

⁵ See Securities Exchange Act Release No. 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996) (ICUs) and Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) (PDRs).

⁶ See American Stock Exchange ("Amex") Rules 1000 (Portfolio Depository Receipts) and 1000A (Index Fund Shares).

⁷ See *supra* note 4.

composed of securities with substantial market capitalization and trading volume. The proposed amendments to CHX Rules 24 and 25 provide that the Exchange may approve for trading pursuant to Rule 19b-4(e) a series of ICUs or PDRs if the components that, in the aggregate, account for at least 90% 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% 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,⁸ and all securities in an 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 ICUs or PDRs traded pursuant to generic standards must meet these eligibility criteria as the date of the initial deposit of securities and cash into the trust or fund.⁹

Under the proposed amendments to CHX Rules 24 and 25, the underlying index or portfolio 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 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 current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network B.¹⁰ Additionally, the

⁸ 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 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 securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

⁹ See Amendment No. 1, *supra* note 3.

¹⁰ The CHX represents that it understands that the information described in this section will be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Ellen Neely, Vice President and General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, dated May 4, 2000 ("Amendment No. 1"). Amendment No. 1 adds a product description delivery requirement for certain series of Investment Company Units ("ICUs") and clarifies the timing for compliance with eligibility criteria relating to indexes underlying a series of Portfolio Depository Receipts ("PDRs"). Amendment No. 1 is more fully described in Section II below.

⁴ 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

Reporting Authority must disseminate for each series of ICUs or PDRs 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 ICUs or PDRs 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 a series of PDRs must be $\frac{1}{64}$ of \$1.00 and, for ICUs, $\frac{1}{16}$, $\frac{1}{32}$ or $\frac{1}{64}$ of \$1.00, as determined by the Exchange for a specific series.

The Exchange will implement written surveillance procedures for the PDRs and the ICUs 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 ICUs or PDRs within five business days of commencement of trading.¹¹

The provisions of CHX Rules 22 *et seq.*, 24 *et seq.* or 25 *et seq.* will apply to all series of PDRs and ICUs listed under Rule 19b-4(e). In addition to the requirements of amended CHX Rules 22, 24 and 25, PDRs and ICUs will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs and ICUs.¹²

ICUs and PDRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (CHX Article IX, Rule 10A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (CHX Article IX, Rule 10(b)). In exercising the discretion described in CHX Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the index or portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Further, the Exchange will issue a Notice to Members for each series to be listed pursuant to Rule 19b-4(e). The notice will describe the characteristics of the securities and will inform

members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of ICUs or PDRs. In addition, the notice will inform members of their responsibilities under Article VIII, Rule 25 ("Business Conduct") in connection with customer transactions in these securities.

The proposal also requires members and member organizations to provide purchasers of a series of ICUs 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 1940.¹³ Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of ICUs that are provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of ICUs must include a statement relating to the product description, in substantially the form set forth in the proposed amendment to CHX Rule 24.

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 ICUs 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 CHX Rule 24. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of ICUs upon the customer's request.

3. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act¹⁴ in general, and in particular, with section 6(b)(5),¹⁵ in that it is designed to promote just and equitable principles of trade, 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.

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 CHX 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, N.W., Washington, D.C. 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-CHX-00-14 and should be submitted by July 21, 2000.

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.¹⁶ Specifically, the Commission finds that the CHX proposal to establish generic standards

disseminated by or through the primary exchange or another entity working with that exchange.

¹¹ 17 CFR 240.19b-4(e).

¹² Telephone conversation between Ellen Neely, Vice President and General Counsel, CHX, and Melinda Diller, Attorney, Division, SEC, on June 13, 2000.

¹³ 15 U.S.C. 80a-24(d).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(5).

to permit the trading of PDRs and ICUs 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 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.¹⁷

In general, ICUs represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities. The Exchange currently trades a number of securities pursuant to UTP under its ICU and PDR listing standards.¹⁸ The Commission has also approved amendments to CHX Rule 24 to permit the trading, pursuant to UTP, of ICUs based on certain Morgan Stanley Capital International Indices ("WEBSSM") and nine series of Select Sector SPDRsSM.¹⁹

PDRs 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. The Commission has approved rule proposals that allow the Exchange to trade, pursuant to UTP, PDRs based on the Standard and Poor's 500 Index

("SPDRs[®]") and the S&P MidCap 400 IndexTM ("MidCap SPDRs"TM).²⁰

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.²¹

As noted above, the Commission has previously approved CHX Rules 24 *et seq.* and 25 *et seq.* that permit the listing and trading of ICUs and PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the CHX 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 ICUs or PDRs currently trading on the Exchange.

The Commission's approval of the proposed generic listing standards for these securities will allow those series of PDRs and ICUs 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 standards through regular inspection oversight.

The Commission previously concluded that PDRs and ICUs 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.²² The Commission

believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and ICUs should produce the same benefits to investors.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs and ICUs under Rule 19b-4(e). All series of PDRs and ICUs listed under the generic standards will be subject to the full panoply of CHX rules and procedures that now govern the trading of existing PDRs and ICUs on the Exchange or pursuant to UTP.

Accordingly, any new series of PDRs and ICUs listed and traded under Rule 19b-4(e) will be subject to CHX 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 suitability requirements, the election of a stop or limit order, and margin.

In addition, the CHX has developed specific listing criteria for series of PDRs or ICUs 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 PDRs or ICUs 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 ICUs and PDRs 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.

In addition, as previously noted, all series of PDRs and ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the CHX 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 CHX flexibility to delist PDRs or ICUs if circumstances warrant such action.

2000)(approving SR-Amex-00-14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (Noticing SR-Amex-00-14).

¹⁷ *Id.* In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See *supra* note 5. These listing standards are similar to those maintained by other exchanges. See, e.g., Amex Rules 1000 (Portfolio Depository Receipts) and 1000A (Index Fund Shares).

¹⁹ See Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (WEBS); Securities Exchange Act Release No. 40950 (January 15, 1999), 64 FR 3730 (January 25, 1999) (Select Sector SPDRs). "WEBS" is a service mark of Morgan Stanley Group, Inc. "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

²⁰ See Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997). "S&P Midcap 400 Index," "MidCap SPDRs" and "SPDRs" are trademarks of The McGraw-Hill Companies, Inc.

²¹ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

²² See Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24,

Furthermore, the Commission finds that the Exchange's proposal to trade PDRs in minimum fractional increments of $\frac{1}{64}$ of \$1.00 and ICUs in increments of $\frac{1}{16}$, $\frac{1}{32}$, or $\frac{1}{64}$ of 1.00 is consistent with the Act. 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 PDRs or ICUs, thereby protecting customers and the public interest consistent with section 6(b)(5) of the Act.²³

The Exchange represents that the Reporting Authority will disseminate for each series of PDRs or ICUs 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 the exchange, when the CHX 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 CHX has developed surveillance procedures for PDRs and ICUs listed under the generic standards that incorporate and rely upon existing CHX surveillance procedures governing PDRs, ICUs, and equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and ICUs 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.²⁴ 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 PDRs or ICUs 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 PDRs and ICUs. Members and member organizations will be required to provide to all purchasers of ICUs or PDRs 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 customer 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 ICU or PDR constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs or ICUs under the generic standards, the Exchange will issue a circular to its members 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 PDRs or ICUs. The circular also will inform members of their responsibilities under CHX Article VIII, Rule 25 in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investor about the terms and characteristics of a particular series and is consistent with section 6(b)(5) of the Act.²⁵

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. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to section 19(b)(1) of the Act.²⁶ The Commission does not believe that the proposed rule changes raises novel regulatory issues that were not addressed in the Amex filing. 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,²⁷ to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-CHX-00-14) and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 3351]

Culturally Significant Objects Imported for Exhibition; Determinations: "Van Gogh to Mondrian: Dutch Works on Paper"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Van Gogh to Mondrian: Dutch Works on Paper,"

²⁶ See *supra* note 22.

²⁷ 15 U.S.C. 78s(b)(5).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(5).