

providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, removed impediments to and perfect the mechanism of a free and open market system, and, in general, to protect investors and the public interest. Moreover, the proposal is not designated to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁴

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.¹⁵ Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading and other issues.

B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP and meets all of the specific criteria and listing standards that the Commission approved in earlier orders.¹⁶ This finding specifically extends to the CBOE's intention to trade certain of the HOLDRs type of trust issued receipt, currently limited to Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and

¹⁴ In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may not longer adequately reflect a cross section of the selected industry. Accordingly, the CBOE has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each loss of a security thereafter.

¹⁶ See *supra* note 5.

Telecom HOLDRs.¹⁷ Trust issued receipts are equity securities that will be subject to the full panoply of CBOE rules governing the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.¹⁸

Moreover, in approving this proposal, the Commission notes the CBOE's representation that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The CBOE represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Finally, the CBOE will apply surveillance procedures for trust issued receipts that incorporate and rely upon existing CBOE surveillance procedures governing equities. The Commission believes that these surveillance procedures will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the CBOE's proposal will ensure that investors have sufficient information to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The CBOE will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipt. The Commission also notes that upon the initial listing of any trust issued receipts, the CBOE will issue a circular to its members highlighting the characteristics of trust issued receipts, including that trust issued receipts are not individually redeemable.

D. Accelerated Approval

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. As noted above, the Commission has approved the listing and trading of trust issued receipts, including the aforementioned series of HOLDRs which the CBOE intends to

¹⁷ See *infra* note 20.

¹⁸ Trading rules pertaining to the availability of odd lot trading do not apply because trust issued receipts only can be traded in round lots.

trade pursuant to UTP, on other exchanges, under rules that are substantially similar to those in CBOE's proposal. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.¹⁹ The Commission believes that trading of this product raises no novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.²⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CBOE-00-23), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43144; File No. SR-CBOE-00-24]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees

August 10, 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 June 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission

¹⁹ See *supra*, note 5.

²⁰ However, the Commission notes that, notwithstanding approval of the listing standards for trust issued receipts and, specifically, Biotech HOLDRs, Internet HOLDRs, Broadband HOLDRs, B2B Internet HOLDRs, Internet Architecture HOLDRs, Internet Infrastructure HOLDRs, Pharmaceutical HOLDRs, Semiconductor HOLDRs, and Telecom HOLDRs, other similarly structured products; including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(1).

² CFR 240.19b-4.

("Commission") the proposed rule change as described in Items I, II, and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to (i) make certain fee changes and (ii) renew and amend the Exchange's Fee Reduction Program and Index Customer Larger Trade Discount Program. The text of the proposed rule change is available at the CBOE and the Commission.

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes (i) to make certain fee changes and (ii) to renew and amend the Exchange's Prospective Fee Reduction Program and Index Customer Large Trade Discount Program. The fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22 and are effective as of July 1, 2000.

The Exchange is increasing the following fees. First, the index option market-maker transaction fee will be increased from \$.15 per contract to \$.19 per contract, to equal the rate charged to equity market-makers. Second, the index option non-facilitation order fee will be increased from \$.15 per contract to \$.19 per contract, to equal market-maker rates. Third, the S&P 100 ("OEX") facilitation fee will be increased from \$.06 per contract to \$.10 per contract, to equal the facilitation rates of all other indexes. Fourth, the equity option facilitation fee will be increased from \$.06 per contract to \$.10 per contract, to equal the index facilitation rates. Fifth, the ILX trading floor booth terminal rental fee will be increased from \$350 per month to \$400 per month. Sixth, the Access fees will

be increased from \$100 to \$110 for floor Managers, and from \$50 to \$55 for Clerks. Seventh, the monthly fee for certain booths that may be used to flash signals to the OEX pit will be increased from \$150 to \$500, equaling the rate charged for S&P 500 and Nasdaq-100 phone positions. The booths subject to this increased monthly fee are a subset of the perimeter booths category on the Exchange's fee schedule. Eighth, the Dow Jones monthly booth fee will be increased from \$300 to \$500. Finally, registration fees will be increased from \$35 to \$45 for initial applications; and will be increased from \$30 to \$40 for annual and transfer applications. Registration maintenance fees will be increased from \$30 to \$40 for registered representatives, registered options principals, and financial/operations principals. The Exchange proposes to amend Rule 2.22(b) to reflect the increase in the registration fees.

The Exchange also proposes to implement two new fees. First, the Exchange proposes to implement a Firm FOCUS Minimum Monthly Fee to supplement its existing Firm Designated Examining Authority ("DEA") Fee, which is current \$.40 per \$1,000 of gross revenue. This new minimum fee will be \$1,000 for clearing member firms and \$250 for non-clearing member firms.³ The purpose of this fee is to help the Exchange more closely cover the costs of regulating certain member firms that previously were assessed little or no fees in this area. Second, the Exchange proposes to establish a monthly Designated Primary Market Maker Facilities Fee that would be either \$300, \$600 or \$900 depending on the size of the trading station utilized. This fee is similar to facilities usage fees charged to specialists on other exchanges.

In addition to implementing the two fees described above, the Exchange proposes to reinstate its transaction fee of \$.19 per contract for broker-dealer marketable orders of 30 contracts or less routed via the Exchange's Order Routing System, which the Exchange had previously waived. The Exchange is also proposing to reinstate transaction fees for FLEX equity options ("E-FLEX"), by applying the Exchange's listed equity options fee schedule to E-FLEX options. These fees had also been waived by the Exchange. There will continue to be no transaction fee for customer E-FLEX

³ The Firm FOCUS Minimum Monthly Fee will apply to those clearing member firms and non-clearing member firms whose DEA Fee would not otherwise exceed the thresholds of \$1,000 and \$250, respectively. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

options orders. The Exchange believes that reinstating these fees is necessary to make the Exchange's options transaction charges more consistent with those of other options exchanges.

The Exchange also proposes to renew its Prospective Fee Reduction Program. The program currently provides that if at the end of any quarter of the Exchange's fiscal year, the Exchange's average contract volume per day on a fiscal year-to-year basis exceeds certain predetermined volume thresholds, the Exchange's market-maker transaction fees will be reduced in the following fiscal quarter in accordance with a fee reduction schedule. The Exchange proposes to raise the volume thresholds and renew the Program for one year, beginning July 1, 2000 and ending June 30, 2001. Trading volume in the fourth quarter of fiscal year 2000 will be used to determine the discount applied in the first quarter of fiscal year 2001.

Specifically, the CBOE proposes to raise the volume thresholds as follows: (i) the threshold volume at which a \$.01 fee reduction applies will be raised from 850,000 to 1,050,000 contracts; (ii) the threshold volume at which the \$.02 fee reduction applies will be raised from 900,000 to 1,100,000 contracts; (iii) the threshold volume at which a \$.03 fee reduction applies will be raised from 950,000 to 1,200,000 contracts; and (iv) the threshold volume at which a \$.04 fee reduction applies will be raised from 1,000,000 to 1,300,000 contracts. The Exchange is also proposing to establish two new thresholds for further fee reductions as follows: (i) a \$.05 fee reduction for 1,400,000 to 1,499,999 contracts; and (ii) a \$.06 fee reduction applies for 1,500,000 contracts and above.

The Exchange also proposes to renew and modify its Index Customer Large Trade Discount Program. This Program provides discounts on the transaction fees that CBOE members pay with respect to customer index orders for 500 or more contracts. Currently, for any month that the Exchange's average contract volume per day exceeds certain predetermined volume thresholds, the transaction fees that are assessed by the Exchange in that month with respect to customer index orders for 500 or more contracts are subject to a discount in accordance with a discount schedule. The program is scheduled to terminate on June 30, 2000 at the end of the Exchange's 2000 fiscal year. The Exchange proposes to renew the Program for one year, beginning on July 1, 2000 and ending on June 30, 2001. The Exchange is also proposing to eliminate the volume thresholds and to provide that for trades of 500 contracts

and above, regardless of monthly volume, transaction fees will be reduced by 30% in all index products.

In addition, the Exchange proposes to eliminate all booth variable fees. These fees have significantly declined in recent years, mostly due to firm consolidations and increased volume.

The proposed amendments are the product of the Exchange's annual budget review. The amendments are structured to fairly allocate the costs of operating the Exchange in the event that the Exchange experiences higher volume. In addition, although the proposed rule change provides that the Exchange's Fee Reduction Program and the Exchange's Index Customer Large Trade Discount Program will terminate at the end of the Exchange's 2001 fiscal year, the Exchange intends to evaluate these Programs prior to the beginning of the 2002 fiscal year and may renew these Programs in the same modified form for the 2002 fiscal year.⁴

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁶ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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.

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

Written comments were neither solicited nor received.

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

Because the foregoing rule change establishes our changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4

⁴ The Commission notes and the Exchange acknowledges that it would be required to file a proposed rule change pursuant to Section 19(b) of the Act before renewing or modifying these programs. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 20, 2000).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(34)(A)(iii).

thereunder.⁸ 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.

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 20549-0609. 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 the File No. SR-CBOE-00-24 and should be submitted by September 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43143; File No. SR-NYSE-00-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Floor Conduct and Safety Guidelines

August 10, 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 July 27, 2000, the New York Stock Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of an amendment to the Exchange's Floor Conduct and Safety Guidelines (the “Guidelines”) with respect to policies and procedures on: employment of clerical personnel, entering or crossing the Trading Floor, surrender of Exchange-issued Visitor's passes, handling violations of the Guidelines, and harassment. The Guidelines are a “stated policy, practice or interpretation” concerned with the administration of Exchange Rules 35 and 37.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 purpose of the Exchange's Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and to not jeopardize the safety or welfare of others. The proposed rule change enables the Exchange to keep its Guidelines consistent with current and new Exchange policy and procedures.

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-(a)(12).

¹ 15 U.S.C. 78s(b)(1)

² 17 CFR 240.19b-4.