

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

1. Purpose

The Exchange intends to list Index Funds Shares based on the FORTUNE 500 Index and the FORTUNE e-50 Index pursuant to Rule 19b-4(e) under the Act. In addition, the Exchange will trade options on the Indexes as well as options on the Index Fund Shares based on the Indexes. The Exchange proposes to add Amex Rules 1004A, 902C(k), and Commentary .07 to Rule 915 ("Rules") relating to various disclaimers of liability and warranties in connection with the Indexes and trading in Index Fund Shares, index options, and options on the Index Fund Shares based on the Indexes (collectively, "Products"). The Rules would provide, among other things, that the Indexes are licensed for use by the Exchange in connection with the Products; that the Products have not passed on by FORTUNE for suitability for a particular use; and that the Products are not sponsored, endorsed, sold or promoted by FORTUNE. The Rules also state that FORTUNE does not warrant the accuracy and/or completeness of the Indexes or the data included therein, results to be obtained from use of the Indexes or such data, or fitness for a particular use with respect to the Indexes or such data.

Proposed Amex Rule 1004A is similar to Amex Rules 1004, 1005 and 1006, which provide various disclaimers for Standard & Poor's, Dow Jones, and Nasdaq Indexes in connection with Portfolio Depository Receipts (e.g., SPDRs®, DIAMONDS®, and Nasdaq-100® Index Tracking Stock). Proposed Amex Rule 902C(k) is similar to various disclaimers in Rule 902C(c) through (j) relating to index options. Commentary .06 to Amex Rule 915 sets forth criteria applicable to options on Exchange-Traded Fund Shares, including Index Fund Shares, and proposed Commentary .07 to Amex Rule 915 establishes an approach similar to that in Amex Rules 1004-1006 and 902C for index disclaimers with respect to options on Index Fund Shares.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) ⁴ of the Act in general and furthers the objectives of section 6(b)(5) ⁵ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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 investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

the Exchange represents that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act ⁶ and Rule 19b-4(f)(6) thereunder ⁷ because the proposed rule change has been properly designated from the Amex as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. 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 the furtherance of the purposes of the Act. ⁹

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, 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-Amex-00-45 and should be submitted by September 19, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43194; File No. SR-CBOE-00-04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend and Codify Its Equity Options Post Telephone Policy

August 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 February 25, 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, II, and III below, which Items have been prepared by the CBOE. 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 amend and codify its policy governing the use of member-owned or Exchange-owned telephones on the trading floor with

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A)

⁷ 17 CFR 240.19b-4(f)(6).

⁸ As required by Rule 19b-4(f)(6)(iii), the Exchange gave the Commission written notice of its intent to file the proposed rule change, along with a description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

⁹ 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

respect to communications at equity options trading posts.

The text of the proposed rule change is available at the CBOE and at 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 its 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 purpose of the proposed rule change is to expand the existing CBOE policy governing the use of telephones at equity option trading posts³ to make it more consistent with the CBOE's current index option trading post telephone policy by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts, and to incorporate that policy into the Exchange's rules. However, unlike the current index option post policy, the proposed rule would generally allow for the receipt of orders directly at the post over outside telephone lines only when the order(s) are placed during *outgoing* telephone calls. The Exchange seeks to codify its current equity option post telephone policy (as modified by the changes proposed in this filing), to make clear to member and member organizations the Exchange's position with respect to the use of telephones at equity option posts and to prevent any misunderstandings regarding the policy, which has been subject to considerable change in recent years. The proposed rule would supersede any previous policies concerning the use of telephones at equity option trading posts established in CBOE Regulatory Circulars.

The proposed change to the equity post telephone policy is the latest in a continual expansion of direct telephone access of orders to the equity option

trading posts since a telephone policy for equity option posts was first filed with the Commission in 1993, in SR-CBOE-93-24.⁴ That initial policy prohibited any orders from being transmitted over the outside telephone lines to the equity option posts, although at that time, and continuing to the present, orders could be transmitted over the intra-floor lines from one point on the Exchange floor to another. In 1996, the Exchange liberalized its telephone policy at equity posts to allow orders of CBOE market-makers to be received over the outside telephone lines directly to the trading posts. This change allowed CBOE market-makers to transmit their orders more efficiently at those times when they may need to be off the floor.

Thus, under the current policy, the only orders for equity options that may be received at the post directly via telephone lines from off-floor locations are off-floor orders of CBOE market-makers.⁵ The proposed amendment would expand this policy by permitting the receipt of off-floor orders from any source (*i.e.*, members, broker-dealers, non-broker-dealers, or public customers) over outside telephone lines directly at the equity trading posts during outgoing telephone calls.⁶ However, because the Exchange believes that allowing orders from any source to be telephoned from outside the CBOE facility directly into the equity trading posts could be too disruptive to trading at the posts, the proposed amendment would only allow for such orders to be transmitted to the equity posts pursuant to a telephone call initiated at the post (an outgoing call). CBOE market-makers, however, would still be allowed to transmit orders over the telephone lines from off the floor directly to the equity trading posts.

This liberalization of the Exchange's telephone policy at equity posts is consistent with the recommendation of the Equity Floor Procedure Committee. That Committee, which oversees trading at the equity option posts, believes that the liberalization of this policy will help make the Exchange more efficient by reducing the time it takes to transmit an

order and effect a trade on the Exchange. This, in turn, will enable the Exchange to be more competitive, especially since speed of execution is increasingly a basis of competition among markets.

The proposed change makes the policy governing telephone orders at equity options posts more consistent with the comment policy at the OEX post since 1998.⁷ As it does at the OEX trading post, the Exchange intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts by means of complaints from Exchange members at the post, as well as observations of Floor Officials and Exchange staff. Further, any individual member or associated person receiving orders over outside telephone lines must be properly qualified under Exchange rules, including those in Chapter IX, to accept such orders.

The Equity Floor Procedure Committee will be responsible for implementing this policy in conformity with Exchange Rules and the Act.⁸ The Equity Floor Procedure Committee will approve access and the phone technology, and will decide any other issues relating to this policy. Additionally, the CBOE Department of Financial and Sales Practice Compliance will be required to review and approve all applications relating to the policy to ensure that the applicant is intending to transact business which the applicant is authorized to transact.

The Exchange intends to implement these changes within sixty days after they are approved.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with, and furthers the objectives of, Section 6(b)(5)⁹ of the Act in that it is designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

⁴ See Securities Exchange Act Release No. 33701 (March 2, 1994).

⁵ RG 97-92 is the latest circular reflecting the current equity telephone policy which was approved by the Commission in Securities Exchange Act Release No. 37876, 61 FR 56728 (November 4, 1996), and in Securities Exchange Act Release No. 39331, 62 FR 62650 (November 24, 1997).

⁶ In adopting this change, the CBOE wants to provide more immediate access into its trading crowds to its customers. The Exchange believes that this expansion in access is necessary to allow the CBOE to continue to satisfy its customers in an increasingly competitive environment.

⁷ The OEX policy is set forth in RG-98-09, which was approved in Securities Exchange Act Release No. 39435, 62 FR 66157 (December 17, 1997).

⁸ Responsibility for accepting orders from a wide range of customers will be borne by the member firms. Floor brokers accepting orders in this manner would be required to be qualified pursuant to Exchange Rule 9.1. As is the case with brokers accepting orders of public customers over OEX post telephones, any broker speaking directly with a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

⁹ 15 U.S.C. 78f(b)(5).

³ Equity trading posts are all trading posts that are under the jurisdiction of the Equity Floor Procedure Committee (all trading posts except DJX, NDX, OEX and SPX), including Designated Primary Market-Maker crowds.

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

The Exchange represents that the proposed rule change will impose no burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 File No. SR-CBOE-00-04 and should be submitted by September 19, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43197; File No. SR-DTC-00-2]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Issuance of Preferred Stock

August 23, 2000.

On February 2, 2000, the Depository Trust company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-00-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On February 3, 2000, DTC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on April 4, 2000.² On April 18, 2000, DTC filed a second amendment to the proposed rule change.³ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

In March 1999, DTC amended its organization certificate to provide for up to \$150 million of preferred stock as thereafter authorized by the Board of Directors.⁴ Under the rule change, DTC will issue \$75 million of series A preferred stock and will reduce the mandatory deposits to the participants fund by a like amount.⁵

The issuance of the \$75 million of series A preferred stock, the

corresponding reduction of mandatory participants fund deposits, and the transition to the new arrangements will be governed by the following documents.⁶

(1) *Certificate of Amendment of the Certificate of Incorporation*. The certificate of amendment sets forth the relative rights (including a dividend which will provide an after-tax return comparable to the after-tax return on participant fund deposits), preferences, and limitations of the series A preferred stock.

(2) *Revised DTC Rules*. The revised rules set forth:

(a) the requirement that participants purchase and own shares of series A preferred stock;⁷

(b) the amount of series A preferred stock that participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of series A preferred stock are to be transferred among participants, the method and timing of payment for shares of series A preferred stock, and certain limitations on the transfer of shares of series A preferred stock;⁸

(c) the right of DTC, acting as agent and attorney-in-fact for its participants, to pledge participants' shares of series A preferred stock to DTC's end-of-day lenders;⁹

(d) the right of DTC, acting as agent and attorney-in-fact for its participants, to sell any participant's shares of series A preferred stock to other participants (which have a corresponding obligation to purchase such shares) and to apply the proceeds to the participant's obligations to DTC;¹⁰

(e) various new and amended defined terms such as "preferred stock," "required preferred stock investment," "actual preferred stock investment," and "aggregate required deposit and investment";¹¹

(f) the structure under which DTC, acting as agent and attorney-in-fact for a party that has ceased to be a participant, shall sell all of the shares of series A preferred stock of the former participant to current participants (who shall be required to purchase such shares pro rata to their required preferred stock investments at the time

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42578, (March 27, 2000), 65 FR 17688.

³ The April 18, 2000 amendment to the proposed rule filing was technical in nature and did not require republication of the notice.

⁴ Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333.

⁵ In connection with this proposed rule change, the Commission advised DTC that it will take no action with respect to DTC broker-dealer participants treating investments in DTC series A preferred stock as allowable assets for purposes of Rule 15c3-1 promulgated under Section 15(c)(3) of the Act. Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard B. Nesson, Executive Vice President and General Counsel, DTC, (August 21, 2000).

⁶ A copy of DTC's proposed rule change and the attached exhibits, including the Certificate of Amendment of the Organization Certificate, the revised DTC Rules, and the Transition Procedures, are available at the Commission's Public Reference Section or through DTC.

⁷ DTC Rule 4, Section 2.

⁸ *Id.*

⁹ DTC Rule 4, Section 2(f).

¹⁰ DTC Rule 4, Section 2(f).

¹¹ DTC Rule 1.