

DC 20555-0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPAA), 42 U.S.C. 10154. Under section 134 of the NWPAA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPAA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662, dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the

hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendments dated October 4, 2000, which is available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://nrc.gov>).

Dated at Rockville, Maryland, this 27th day of November 2000.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43620; File No. SR-CSE-00-06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc., To Provide for the Listing and Trading of Index Fund Shares

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 13, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by the Exchange. On November 17, 2000, the CSE filed Amendment No. 1 to the proposal.³ The Commission is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CSE requested accelerated effectiveness of the proposed rule change and provided reasons therefor. See Letter

publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval of the proposed rule change and Amendment No. 1.

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

The CSE proposes to amend its rules to adopt listing standards and trading rules for Index Fund Shares, including generic listing standards, which would permit the Exchange to trade, either by listing or pursuant to unlisted trading privileges ("UTP"), series of Index Fund Shares. Below is the text of the proposed rule change; new language is in italics.

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Chapter XI

Trading Rules

Rule 11.9 National Securities Trading System

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Rule 11.9(x) Index Fund Shares

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified.

(a) Index Fund Share⁴ means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) that is

from James M. Flynn, Staff Attorney, CSE, to Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission (November 16, 2000). The CSE in fact meant to request accelerated approval under Section 19(b)(2) of the Act in Amendment No. 1. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000. Amendment No. 1 also made certain minor changes to the text of the proposed rule language, discussed below.

⁴ In the proposed rule language submitted by the CSE, the term "Index Fund Share" as used here inadvertently had the letter "s" at the end. In the final rule text, the word "Share" will be in the singular. See Amendment No. 1.

issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's⁵ request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Funds Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange. The⁶ term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(3) **Disclosure.** Upon request of a customer, members and member organizations shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) **Designation.** The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares

shall be based on each particular stock index or portfolio and shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) **Initial and Continued Listing and/or Trading.** Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) **Commencement of Trading.**—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) **Continued Trading.**—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances:

(i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

(ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) **Voting.** Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

* * * **Interpretation and Policies**

.01 **The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:**

(a) **Eligibility Criteria for Index Components.** Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio

underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:

(i) **Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 Million;**

(ii) **The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;**

(iii) **The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;**

(iv) **The underlying index or portfolio must include a minimum of 13 stocks; and**

(v) **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).**

(b) **Index Methodology and Calculation.**

(i) **The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;**

(ii) **If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and**

(iii) **The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.**

(c) **Disseminated Information.** The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This 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.

(d) **Initial Series Outstanding.** A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) **Minimal Fractional Trading Variation.** The minimum fractional

⁵ In the initial language of the proposed rule, the CSE inadvertently omitted the apostrophe in the word "holder's." The CSE has indicated that, in the official rule language, the apostrophe will be included. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000.

⁶ In the proposed rule language submitted by the CSE, the two sentences of this paragraph were inadvertently run together and joined with a comma. The CSE has indicated that, in the official rule language, the sentences will be separated by a period, and the first letter of the word beginning the second sentence ("The") will be capitalized. See Amendment No. 1.

trading variation may vary among different series of Index Fund Shares but will be set at $\frac{1}{16}$, $\frac{1}{32}$, or $\frac{1}{64}$ of \$1.00.

(f) *Hours of Trading.* Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) *Surveillance Procedures.* The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) *Applicability of Other Rules.* The provisions of the Cincinnati Stock Exchanges Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written 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 such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]."

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 Index

Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a⁷ member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

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 III below. The Exchange has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes, in a new CSE Rule 11.9(x), to adopt listing standards to accommodate the trading, whether by listing or pursuant to UTP, of Index Fund Shares. The CSE has stated that these standards are similar to those established by other exchanges.⁸ The CSE believes that the proposed rule change would further the intent of Rule 19b-4(e) under the Act⁹ by allowing trading on the Exchange to begin in Index Fund Shares, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The CSE also believes that this new procedure has the

⁷ In the proposed rule language submitted by the CSE, the word "a" as used here was omitted. The CSE has indicated that, in the official rule language, the word "a" will appear before the word "member." See Amendment No. 1.

⁸ See Exchange Act Release No. 34-42988 (June 28, 2000), 65 FR 42041 (July 7, 2000) (accelerated approval of BSE generic listing standards for Index Fund Shares); Exchange Act Release No. 34-42975 (June 22, 2000), 65 FR 40712 (June 30, 2000) (accelerated approval of CHX generic listing standards for Portfolio Depository Receipts and Investment Company Units); Exchange Act Release No. 34-42833 (May 26, 2000), 65 FR 35679 (June 5, 2000) (accelerated approval of CBOE generic listing standards for Index Portfolio Shares); Exchange Act Release No. 34-42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (approval of Amex generic listing standards for Portfolio Depository Receipts and Index Fund Shares).

⁹ 17 CFR 240.19b-4(e).

potential to reduce the time frame for bringing these securities to market or for trading them pursuant to UTP.

i. Index Fund Shares Generally

Index Fund Shares are securities that are issued by an open-end management investment company ("Fund") that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index.

Issuance of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiples thereof ("Creation Units"). The applicable Creation Unit size aggregation will be set forth in the Fund's prospectus and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (e.g., value in excess of \$450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form.

Index Fund Shares will be traded on the Exchange like other equity securities, and the CSE's equity trading rules will apply to the trading of Index Fund Shares. The Exchange expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitrageurs, and the Exchange designated dealers (generally referred to as "specialists"). Redemption of Index Fund Shares generally will be made "in kind" with a portfolio of securities and cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances of redemptions also could occur for cash under specified circumstances (e.g., if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Exchange expects that a Fund will make available on a daily basis a list of the names and the required

number of shares of each of the securities to be deposited in connection with issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net expenses and liabilities for such period.

ii. Criteria for Initial and Continued Listing

The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the listing standards used by the CSE for Portfolio Depository Receipts, currently found in Chapter XI, Rule 11.9(v) of the Exchange Rules.¹⁰

If Index Fund Shares are to be listed on the CSE, it will establish a minimum number of Index Fund Shares that must be outstanding at the commencement of Exchange trading, and such minimum number will be included in any required submission under Rule 19b-4.

In connection with continued listing, the CSE will consider the suspension of trading in, or removal from listing of, a Fund upon which a series of Index Fund Shares is based when any of the following circumstances arise: (1) there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. However, the CSE will not be required to suspend or delist from trading, based on the above factors, any Index Fund Shares for a period of twelve months after the initial listing of such Index Fund Shares for trading on the Exchange. In any case, upon termination of a Fund, the Exchange will require that Index Fund Shares issued in connection with that Fund be removed from Exchange listing.

The Exchange believes that these proposed criteria are similar to the

Index Fund Shares listing criteria currently used by the Amex.¹¹

iii. Required Standards To Permit Trading

The CSE proposes to adopt generic listing and delisting standards to permit the trading, either by listing or pursuant to UTP, of Index Fund Shares pursuant to Rule 19b-4(e) under the Act.¹² Accordingly, the CSE proposes to approve a series of Index Fund Shares for listing or trading under the following criteria.

Initial Listing Criteria

Upon the initial listing of a series of Index Fund Shares, component stocks that in the aggregate account for at least 90 percent of the weight of the underlying index or portfolio must have a minimum market value of at least \$75 million. The component stocks representing at least 90 percent of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares. The most heavily weighted component stocks in an underlying index or portfolio cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio.¹³ All securities in an underlying index or portfolio must be listed on either a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market). Finally, any series of Index Fund Shares must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund.

Continued Listing Criteria

The index underlying a series of Index Fund Shares 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 will erect a fire-wall around the personnel who have access to information concerning changes and adjustments to the index, and the index will be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based upon, for example, current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

Index Fund Shares will be registered in book entry form through the Depository Trust Company. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading. Trading in Index Fund Shares on the Exchange will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. (all times Eastern Standard Time) for each series of Index Fund Shares, as specified by the CSE.

Pursuant to UTP, the CSE will rely upon the primary exchange that originally listed the respective Fund to monitor, surveil, and insure that the proceeding listing criteria are met by each index or portfolio that is listed and traded on the CSE. The CSE has stated that it will also monitor the respective primary exchange's actions, news releases, and disclosures made about any Index Fund Shares traded on the CSE.

iv. CSE Rules Applicable to the Trading of Index Fund Shares

Index Fund Shares are considered "securities" under the CSE's Rules and are subject to all applicable trading rules, including the provisions of CSE Chapter XIV, Rule 14.9, ITS "Trade-Throughs" and "Locked Markets," which prohibit Exchange members from initiating trade-throughs for Intermarket Trading System securities, as well as rules governing priority, parity, and precedence of orders; market volatility-related trading halt provisions; and responsibilities of CSE Designated Dealers.¹⁴ CSE equity margin rules also

¹⁴ The term "Designated Dealer" means a proprietary Member who maintains a minimum net capital of at least the greater of \$500,000 or the amount required under Rule 15c3-1 under the Act, 17 CFR 240.15c3-1, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for

¹⁰ See Exchange Act Release No. 34-39268 (October 22, 1997), 62 FR 56211 (October 29, 1997) (approval of CSE proposal to establish listing criteria for Portfolio Depository Receipts).

¹¹ See *supra* note 8.

¹² 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b) of the Act, 15 U.S.C. 78s(b).

¹³ The CSE states that, under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25 percent of a fund's total assets, and at least 50 percent 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 percent of such fund's total assets.

will apply to trading in Index Fund Shares.

The CSE's surveillance procedure for Index Fund Shares will be similar to the existing CSE procedures used for Portfolio Depositary Receipts¹⁵ and will incorporate and rely upon existing Exchange surveillance systems. The Exchange has stated that it believes these procedures will effectively monitor the trading activity in Index Fund Share products so as to ensure full compliance with Exchange rules and the federal securities laws.¹⁶

Prior to the commencement of trading in Index Fund Shares, the Exchange will issue a circular to members highlighting the characteristics of Index Fund Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular will discuss what Index Fund Shares are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Index Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Exchange Rules, dissemination information, trading information, and the applicability of suitability rules.

Additionally, the circular will inform members of specific Exchange policies, such as trading halts and market conditions particular to such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters have been reached.¹⁷ Second, the circular will advise that the Exchange may consider factors such as the extent to which trading is not occurring in one or more deposited securities and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market in such securities are present.

Pursuant to Rule 12f-5 under the Act,¹⁸ to trade a particular class or type of security pursuant to UTP, the Exchange must have rules providing for transactions in such class or type of security. The CSE's proposed rule change is designed to create standards substantially similar to those approved for other exchanges.

v. Disclosure to Customers

The CSE will require its members to provide all purchasers of newly issued Index Fund Shares with a prospectus for

each separate Fund. Because the Creation Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933¹⁹ will apply to all investors in Index Fund Shares, including investors who make secondary market purchases on the Exchange in Index Fund Shares. With respect to series of Index Fund Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940,²⁰ the CSE will inform members and member organizations regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series.

For any exempted series, the Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the Fund issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to a purchaser. In addition, members and member organizations shall include such written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [Fund name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

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 Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are

directly applicable to members and member organizations under this rule.

Upon request of a customer a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

vi. Minimum Fractional Change

The CSE proposes that the minimum fractional change for Index Fund Shares on the Exchange will be 1/16th, 1/32nd, or 1/64th of \$1.00, depending on the series of Index Fund Shares. The Exchange has stated that these are the same minimum fractional increments for the trading of Index Fund Shares on the CSE, until such time as decimal increments are implemented.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating securities transactions; 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 CSE does not believe that the proposed rule change would 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

No written comments were either solicited or received in connection with 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 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

Designated Issues into the System. See CSE Rule 11.9(a)(3).

¹⁵ See CSE Rule 11.9(v).

¹⁶ See Amendment No. 1

¹⁷ See CSE Rules, Chapter XIV.

¹⁸ 17 CFR 240.12f-5.

¹⁹ 15 U.S.C. 77e(b)(2).

²⁰ 15 U.S.C. 80a-24(d).

²¹ 15 U.S.C. 78f(b)(5).

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-CSE-00-06 and should be submitted by December 26, 2000.

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

The Commission finds that the proposal 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).²² Specifically, the Commission finds that the CSE's proposal to establish generic standards to permit the trading of Index Fund Shares 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.²³ By establishing generic standards, the proposal should reduce the CSE'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 CSE'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.²⁴ The Commission notes that it has previously approved similar rules, including generic listing standards, relating to similar products traded on the Boston Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange, and the Chicago Stock Exchange.²⁵

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 Exchange 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.²⁶ The Commission's approval of the proposed generic listing standards for Index Fund Shares will allow those series of Index Fund Shares 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 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 Index Fund Shares and like products that it approved for trading under similar rules on other exchanges would allow investors: (1) To respond quickly to market changes through intra-day trading opportunities, (2) to engage in hedging strategies similar to those used by institutional investors, and (3) to reduce transactions costs for trading a portfolio of securities.²⁷ The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed standards for Index Fund Shares should produce the same benefits to the CSE and to investors.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading of Index fund Shares under Rule 19b-4(e). All series of Index Fund Shares listed under the proposed standards will be subject to the full panoply of CSE rules and procedures that now govern the trading of existing securities on the CSE.²⁸ Accordingly, any new series of Index Fund Shares listed and traded on the Exchange, or

pursuant to UTP, will be subject to CSE 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, and margin. These criteria allow the CSE to consider the suspension of trading and the delisting of a series if an event occurred that made further dealings in such securities inadvisable. This will give the CSE flexibility to delist Index Fund Shares if circumstances warrant such action.

The Commission believes that the CSE's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares. Members and member organizations will be required to provide to all purchasers of Index Fund Shares a written description of the terms and characteristics of these securities, to include their description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customers or the public, and to provide a copy of the prospectus, when requested by the 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 Index Fund Shares 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 Index Fund Shares, the CSE 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 prospectus or product description delivery requirements of Exchange members and inform members of their responsibilities under CSE Rules in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequate disclosure to investors about the terms and characteristics of a particular series and are consistent with Section 6(b)(5) of the Act.²⁹

In addition, the CSE has developed specific listing criteria for series of Index Fund Shares 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

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b).

²⁴ 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ See *supra* note 8.

²⁶ See Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (adopting release for Rule 19b-4(e)).

²⁷ See *supra* note 25.

²⁸ The Commission notes that, although Index Fund Shares 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 Funds. Accordingly, the level of risk involved in the purchase or sale of Index Fund Shares is similar to the risk involved in the purchase or sale of traditional common stock. Nevertheless, the Commission believes there are unique aspects to trading Index Fund Shares, which the Exchange has sufficiently and adequately addressed in this proposal.

²⁹ 15 U.S.C. 78f(b)(5).

of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of Index Fund Shares be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the underlying indexes and portfolios 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. Furthermore, the Commission finds that the Exchange's proposal to trade Index Fund Shares in increments of $\frac{1}{16}$, $\frac{1}{32}$, or $\frac{1}{64}$, of \$1.00, until the Exchange is required to convert to decimal trading, is consistent with the Act.

The Exchange also represents that the Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. 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 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 products such as Index Fund Shares are 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.

In its proposed generic listing standards, the CSE represents that it will rely upon its existing surveillance procedures for supervision of trading in Index Fund Shares listed or traded pursuant to Rule 19b-4(e). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares, including those listed or traded 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.³⁰ The Commission further notes that the Exchange has represented 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.³¹

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the CSE's proposal regarding the listing and trading of Index Fund Shares will be substantially similar to the rules for similar products traded on other exchanges that the Commission has previously approved, and that they raise issues that previously have been the subject of a full comment period under Section 19(b) of the Act.³² The Commission does not believe that the proposal raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,³³ to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-CSE-00-06) 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.³⁵

Margaret H. McFarland,

Deputy Secretary.

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³⁰ 15 U.S.C. 78f(b)(5).

³¹ Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 1, 2000.

³² 15 U.S.C. 78s(b) See *supra* note 25.

³³ 15 U.S.C. 78f(b)(6).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43604; File No. SR-CSE-00-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

November 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 13, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 17, 2000, the CSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval of the proposed rule change and Amendment No. 1.

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

The CSE proposes to amend its listing standards for Trust Issued Receipts ("TIRs") to establish generic standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b-4(e) under the Act.⁴ The text of the proposed rule change is available at the principal office of the CSE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CSE requested accelerated effectiveness of the proposed rule change and provided reasons therefore. See Letter from James M. Flynn, Staff Attorney, CSE, to Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission (November 16, 2000). The CSE in fact meant to request accelerated approval of the proposal in Amendment No. 1. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 21, 2000. Amendment No. 1 also corrected a typographical error in the proposed rule text.

⁴ 17 CFR 240.19b-4(e).