

Acquired Fund will take place on or about May 24, 2001.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding the power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if such other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a-8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that DeAm, Inc. owns more than 60% of the outstanding shares of the Acquired Fund. DeAm, Inc. is an affiliate of the Acquiring Fund because DeAm, Inc. and Bankers Trust, the adviser to the Acquiring Fund, are under the "common control" of Deutsche Bank AG. The Funds, therefore, might be deemed to be affiliated with each other for reasons other than those set forth in the rule.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered company concerned

and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the proposed Reorganization are fair and reasonable and do not involve overreaching and that the Funds have substantially similar investment objectives and policies. Applicants also state that the Boards, including a majority of the Independent Trustees, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44244; File No. SR-CBOE-2001-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rules Governing Split-Price Executions on Its Retail Automatic Execution System

May 1, 2001.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),¹ and the Rule 19b-4 thereunder,² notice is hereby given that March 16, 2001, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The CBOE proposes to amend its rules to provide that the applicability of the split-price execution functionality for RAES orders may be determined by the appropriate Floor Procedure Committee on a class-by-class basis. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

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Chicago Board Options Exchange, Incorporated Rules

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Rule 6.8. RAES Operations

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

(a) (i) Firms on the Exchange's Order Routing System ("ORS") will automatically be on the Exchange's Retail Automatic Execution System ("RAES") for purposes of routing small public customer market or marketable limit orders into the RAES system. Those orders which are eligible for routing to RAES may be subject to such contingencies as the appropriate Floor Procedure Committee ("FPC") shall approve. Public customer orders are orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including a foreign broker-dealer as defined in Rule 1.1(xx)) has an interest. The appropriate Floor Procedure Committee ("FPC") shall determine the size of orders eligible for entry into RAES in accordance with paragraph (e) of this Rule. For purposes of determining what a small customer order is, a customer's order cannot be split up such that its parts are eligible for entry into RAES. Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their booths on the floor.

(ii) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in paragraph (b) of this Rule in instances where the best bid or offer on the Exchange's book constitutes the prevailing market best bid or offer, and as otherwise provided in Interpretation and Policy .02 under this Rule 6.8 in respect of multiply-

traded options. A buy order will pay the offer, a sell order will sell at the bid. A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-broker on the trade. A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.

(b) *When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange, contra-side incoming RAES orders shall be executed in accordance with either (i) or (ii) below, as determined by the appropriate Floor Procedure Committee on a class-by-class basis.*

(i) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator." [It is possible that the best bid or offer on the Exchange's book constitutes the prevailing market bid or offer. In those instances, a] *An incoming RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of RAES order will be assigned to participating market-makers at the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price Commitment Quantity"). Any remaining balance thereafter shall be (i) routed to the crowd PAR terminal if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or (iii) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quantity. Any additional remaining balance of a RAES order shall be handled in accordance with (ii) or (iii) of this paragraph.*

(ii) *An incoming RAES order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES*

order will be assigned to participating market-makers at the same price at which the initial portion of the RAES order was executed.

(c)-(g) Unchanged.

* * * Interpretations and Policies:

.01-.08 Unchanged.

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

In its filing with the Commission, 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

On December 1, 1998, the Commission approved a CBOE rule change establishing the Exchange's Automated Book Priority System ("ABP").³ ABP allows an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the best bid or offer on the Exchange's book is equal to the prevailing market bid or offer. As originally approved, ABP provided that in the event the order in the book was for a smaller number of contracts than the RAES order, the entire balance of the RAES order would be assigned to participating market-makers at the same price at which the initial portion of the order was executed against the book, regardless of the next prevailing best bid or offer on the Exchange. Thus, if the book contained an order for one contract that represented the best bid, an incoming market order to sell 50 contracts would execute against the book for one contract and then against the trading crowd for 49 contracts at the book price, regardless of the trading crowd's best bid.

On February 6, 2001, the Commission approved a CBOE rule change filing to enhance ABP to provide that RAES orders subject to ABP be executed against the book price up to the applicable book size or a larger amount

as pre-determined by the appropriate Floor Procedure Committee ("FPC") for the subject option class.⁴ The rule change allows for split-price executions on RAES when the CBOE's best bid (offer) is established by an order in CBOE's book that is for a smaller size than the RAES contract execution guarantee. However, as approved, the revised rule does not allow for a controlled class by class implementation of the split-price functionality.

Accordingly, CBOE now seeks to modify that rule to merely provide that the applicability of the split-price execution functionality to a particular option class be determined by the FPC. Thus, the FPC would pre-determine, on a class by class basis, if incoming RAES orders will be subject to split-price executions when the CBOE's best bid (offer) is established by a booked order, or if incoming RAES orders will be executed in their entirety at the booked order's price as has been the case since the inception of ABP. The CBOE believes the change will provide the Exchange with the needed flexibility to roll out the split-price functionality in a controlled manner.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁵ in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change establishes a change in an existing CBOE trading system that does not significantly affect the protection of investors or the public interest, that

⁴ Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

⁵ 15 U.S.C. 78f(b)(5).

³ Securities Exchange Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

does not impose any significant burden on competition, and that does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(5) of the Rule 19b-4 thereunder.⁷ 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, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE-2001-12 and should be submitted by May 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44243; File No. SR-NASD-2001-14]

Self-Regulatory Organizations; Notice of Filing and Order Accelerating Partial Approval of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify Certain Initial and Continued Listing Standards on Nasdaq

May 1, 2001.

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 March 8, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") 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 Nasdaq. On April 26, 2001, Nasdaq submitted Amendment No. 1 to the proposal.³ The proposal would modify certain initial and continued listing standards on Nasdaq. Nasdaq has also proposed a pilot program that would give immediate effectiveness to certain of the new listing standards. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to that portion of the proposal relating to the pilot program.

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

Nasdaq has filed with the Commission a proposal to amend NASD Rules 4200, 4310, 4320, 4420, and 4450 and thereby modify certain quantitative initial and continued listing standards on Nasdaq. Nasdaq proposes to implement a pilot program that would allow issuers, with respect to certain of the new standards, to comply with either the existing standards or the proposed new standards. The pilot program is designed to ensure that issuers that meet the new standards but

not the existing standards are not delisted before the Commission takes final action on the proposed rule change. The standards that would be included in the pilot are: (1) The new bid price requirement found in NASD Rule 4450(b)(4); and (2) the new equity standard, which replaces the old net tangible assets standard, found in NASD Rules 4310(c)(2)(A)(i), 4310(c)(2)(B)(i), 4320(e)(2)(A)(i), 4320(e)(2)(B)(i), 4420(a)(5), 4420(b)(1), and 4450(a)(3). Nasdaq has proposed that the pilot program would expire on July 1, 2001, or such earlier time as the Commission takes action on the overall proposal.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

- (1)-(27) No change.
- (28) *Reserved* ["Net Tangible Assets" shall mean total assets (including the value of patents, copyrights and trade marks but excluding the value of goodwill) less total liabilities.]
- (29)-(36) No change.

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

- (a)-(b) No change.
- (c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1) For initial inclusion, the issue shall have three registered and active market makers, and for continued inclusion, the issue shall have two registered and active market makers, one of which may be a market maker entering a stabilizing bid.

(2) (A) For initial inclusion, the issuer shall have:

- (i) [net tangible assets of \$4 million] *stockholders' equity of \$5 million;*
- (ii) market capitalization of \$50 million (*currently traded issuers must meet this requirement and the bid price requirement under Rule 4310(c)(4) for 90 consecutive trading days prior to applying for listing*); or
- (iii) net income of \$750,000 (*excluding extraordinary or non-recurring items*) in the most recently completed fiscal year or in two of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2001). In Amendment No. 1, Nasdaq provided a chart that clarifies the proposed schedule for implementing the new listing standards and made certain technical corrections to the proposal.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(5).

⁸ 17 CFR 200.30-3(a)(12).