

future refunds in similar fashion, if and when the circumstances warrant. Recommendations as to the specific timing and amounts of any future refunds would be made by the CBOE's Financial Planning Committee, subject to approval by the Board of Directors.

In order to reduce the costs and administrative burdens placed upon the CBOE and the clearing firms in processing refunds, the CBOE would not issue refunds of less than \$50. The CBOE believes that the cost of processing refunds of such small amounts would likely exceed the value of the refunds.

The CBOE also proposes to credit interest to the DPM accounts retroactively from the beginning of the marketing fee program, based on the average daily balance of each DPM account and the interest rate (currently about 5.5%) that the CBOE earns on its own excess cash.

In addition, effective July 1, 2001, the CBOE proposes to impose a monthly \$10,000 administrative fee to cover its costs of administering the marketing fee program and the refund program. The monthly \$10,000 administrative fee would be divided among the accounts of the various DPM stations trading equity options (currently numbering approximately 68). Under the proposal, each DPM would be assessed its *pro rata* share of the monthly \$10,000 administrative fee, which would be offset against the amount of interest the CBOE will pay to each DPM account. The CBOE believes that this procedure will ensure that the fee is imposed on each DPM account fairly, based on each account's relative size.

The CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

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

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the CBOE, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(2) thereunder.⁷ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 fix 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR-CBOE-2001-25 and should be submitted by July 24, 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. 34-44478; File No. SR-CBOE-2001-10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

June 27, 2001.

I. Introduction

On March 13, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change adopting formal procedures for members to submit proposals to list option classes on the Exchange. The **Federal Register** published the proposed rule change for comment on April 17, 2001.³ The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on May 25, 2001.⁴ This order approves the proposed rule change and grants accelerated approval to Amendment No. 1. The Commission also is soliciting comment on Amendment No. 1 to the proposed rule change.

II. Description of Proposal

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.⁵ The proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 44173 (April 10, 2001), 66 FR 19819.

⁴ See letter from Angelo Evangelou, Legal Division, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated May 24, 2001 ("Amendment No. 1"). Amendment No. 1 revises Interpretation and Policy .07 to CBOE Rule 5.3 to clarify that when the Exchange relies upon other bona fide business considerations in denying or placing conditions or limitations upon a member listing proposal, the Exchange must provide the member with a written response specifying that the Exchange has relied upon other bona fide business considerations, in addition to maintaining a record of the bona fide business considerations supporting its decision.

⁵ As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the CBOE, are required to adopt rules to codify listing procedures to be carried out when a

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

rule would permit a member to submit a written request that the Exchange list a particular option class, specifying the reasons why the member believes the Exchange should list the option class. The Stock Selection Committee would be required to make a decision regarding the request within 35 days of its receipt and to provide the member that submitted the request with a written response setting forth the rationale for the decision within ten days of making the decision.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission believes that the proposed rule change is consistent with the section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by providing formal procedures for members to request the listing of options on the Exchange. The proposal would require the Exchange to respond in writing within 45 days to requests by members to list options. The Commission believes that the proposed procedures and time frames set forth in the proposed rule change are reasonable and adequately balance the Exchange's need to thoroughly examine proposed listings before making its determination with its members' need for a prompt and specific response to its listing recommendation.

In addition, the proposed rule change codifies the factors to be considered by the Exchange in determining whether to list a recommended option. The Commission believes that the proposed factors represent legitimate issues that the Exchange may consider when making a listing decision. The

member or member organization requests the exchange to list options not currently trading on the exchange. See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions ("Settlement Order"). Securities Exchange Act Release No. 43268 (September 11, 2000).

⁶ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

Commission notes that if the Exchange denies or places conditions or limitations upon a proposed listing, it must include its reasons in the letter notifying the member of its decision. The Commission believes that this requirement should help to ensure that the Exchange relies only upon the factors codified in its rules when making a listing decision.

The Commission finds good cause for accelerating approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that Amendment No. 1 provides useful clarification to the proposed rules. Accordingly, the Commission finds that good cause exists, consistent with sections 6(b)(5)⁸ and 19(b) of the Act,⁹ to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the amendment 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 CBOE. All submissions should refer to the File No. SR-CBOE-2001-10 and should be submitted by July 24, 2001.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2001-10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-16675 Filed 7-2-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44481; File No. SR-NYSE-2001-02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the NYSE's Financial Standards for Listing and the Procedures Applied by the Exchange to Companies Below the Exchange's Continued Listing Criteria

June 27, 2001.

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 January 26, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 25, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The proposed rule change consists of amendments to Sections 102, 103, and 802 of the Exchange's *Listed Company Manual* ("Manual") and Exchange Rule 499. The proposed amendments to Sections 102 and 103 of the *Manual* implement a modification to generally accepted accounting principles (GAAP), while proposed amendments to Section

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President & Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (April 24, 2001). Amendment No. 1 replaces the proposed rule change in its entirety.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b).

¹⁰ 15 U.S.C. 78s(b)(2).