

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44908; File No. SR-CBOE-2001-48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Adopt Generic Listing Standards for Trust Issued Receipts, To Provide Alternate Eligibility Requirements for Component Securities of Trust Issued Receipts in Certain Limited Situations and To Increase the Permissible Weight of the Most Heavily Weighted Component Stock of Index Portfolio Shares and Index Portfolio Receipts

October 4, 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 August 31, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to amend its rules to adopt generic listing standards applicable to listing and trading of Trust Issued Receipts ("TIRs") pursuant to Rule 19b-4(e) under the Act, to provide eligibility requirements for component securities represented by a series of TIRs that became part of such TIR under certain limited circumstances, and to increase the permissible weight of the most heavily weighted component stock of Index Portfolio Receipts ("IPRs") and Index Portfolio Shares ("IPs"). Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.³

Chicago Board Options Exchange, Incorporated Rules

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CBOE made non-substantive changes by deleting a typographical error from its rule text. See telephone conversation between Angelo Evangelou, Attorney, CBOE, and Cyndi Nguyen, Attorney, Division of Market Regulation, Commission, on October 1, 2001.

Rule 31.5 Criteria for Eligibility of Securities

L. IPRs.

(a)-(d) Unchanged.

* * * Interpretations and Policies:

.01 The Exchange may approve a series of IPRs for listing and trading (including pursuant to unlisted trading privileges) 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 IPRs on the Exchange, or if the Exchange is trading the IPRs pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of IPRs shall meet the following criteria:

(1)-(2) Unchanged.

(3) The most heavily weighted component stock cannot exceed [25%] 30% 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;

(4)-(5) Unchanged.

(b)-(e) Unchanged.

M. IPRs.

(a)-(b) Unchanged.

* * * Interpretations and Policies:

.01 The Exchange may approve a series of IPs for listing and trading (including pursuant to unlisted trading privileges) 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 IPs on the Exchange, or if the Exchange is trading the IPs pursuant to unlisted trading privileges, upon the initial listing on the original listing exchange, each component of an index or portfolio underlying a series of IPs shall meet the following criteria:

(1)-(2) Unchanged.

(3) The most heavily weighted component stock cannot exceed [25%] 30% 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;

(4)-(5) Unchanged.

(b)-(e) Unchanged.

.02 Unchanged

N. Trust Issued Receipts

Notwithstanding any other provisions in these Rules to the contrary, a series

of Trust Issued Receipts (as defined in Interpretations and Policies .04 following Rule 1.1) may be listed or traded pursuant to unlisted trading privileges on the Exchange subject to the criteria set forth below:

(a)-(d) Unchanged.

* * * Interpretations and Policies:

.01 The Exchange may approve a series of Trust Issued Receipts for listing and trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 ("Exchange Act"), provided each of the component securities satisfies the following criteria:

(i) each component security must be registered under Section 12 of the Exchange Act;

(ii) each component security must have a minimum public float of at least \$50 million.

(iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq, and a reported national market system security;

(iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty days trading period;

(v) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(vi) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

.02 The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

(i) the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security.

(ii) the component security must be registered under Section 12 of the Exchange Act; and

(iii) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard & Poor's Sector Classification

represented by the component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

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 it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its current listing standards for TIRs, contained in CBOE Rule 31.5.N, to provide generic standards that would permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of certain products pursuant to Rule 19b-4(e) under the Act.⁴ The Exchange believes that the application of Rule 19b-4(e) to these securities will further the intent of that rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. Accordingly, the Exchange believes that this new procedure has the potential to reduce the time frame for bringing these securities to the market or for trading them pursuant to UTP. In addition, the Exchange proposes to provide eligibility requirements for component securities represented by a series of TIRs that become part of such TIR under certain limited circumstances, and to make minor changes to its current listing standards for IPRs and IPSs, contained in CBOE Rule 31.5.L and 31.5.M, respectively.

a. Generic Listing Standards for TIRs

In August 2000, the Commission approved the Exchange's proposal to adopt listing standards for TIRs in CBOE

Rule 31.5.N.⁵ As discussed in the Original Approval Order, TIRs are negotiable receipts that are issued by a trust representing securities of issuers ("component securities") that have been deposited and are held on behalf of the holders of the TIRs. TIRs are considered "securities" under the rules of the Exchange and are subject to various applicable trading rules.

The Exchange now is proposing to implement generic listing criteria that are intended to allow those TIRs that satisfy the proposed generic listing standards to start trading without the need for notice and comment and Commission approval. The proposed rule change to CBOE Rule 31.5.N concerning the listing of TIRs would provide that the Exchange may approve for trading, pursuant to Rule 19b-4(e) of the Act, a series of TIRs if the following criteria are satisfied. First, each component security must be registered under Section 12 of the Act. Second, each component security must have a minimum public float of at least \$150 million. Third, each component security must be listed on a national securities exchange or traded through the facilities of the Nasdaq Stock Market, Inc. and a reported national market system security. Fourth, each component security must have an average daily trading volume of at least 100,000 shares and an average daily dollar value of shares traded of at least \$1 million during the preceding sixty-day trading period. Finally, the most heavily weighted component security may not initially represent more than twenty percent of the overall value of the TIR.⁶

The Exchange will implement written surveillance procedures for the TIRs that it trades pursuant to Rule 19b-4(e) of the Act. Further, the Exchange will comply with all recordkeeping requirements of Rule 19b-4(e) of the Act. The Exchange also will file Form 19b-4(e) for each series of TIRs listed under Rule 19b-4(e) of the Act within five business days of commencement of trading.

b. Alternate Eligibility Rules

The Exchange also proposes to provide alternate eligibility requirements for component securities in certain limited situations.

Specifically, the proposed alternate eligibility criteria would apply to a component security that became part of a trust when the security was either: (a) distributed by an issuer already included as a component security in the series of TIRs; or (b) received in exchange for the securities of an issuer previously included as a component security and that are no longer outstanding due to a merger, consolidation, corporate combination or other event. The Exchange believes that it would be useful to allow such securities to remain in the TIR (provided, however, that they meet the proposed standards described below) to reduce the number of distributions of securities from the TIR, which would cause inconvenience and increased transaction and administrative costs for investors.

The eligibility requirements for such component securities are as follows. First, the component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and a reported national market system security. Second, the component security must be registered under Section 12 of the Act. Finally, the component security must have a Standard & Poor's sector classification that is the same as the Standard & Poor's sector classification represented by the component securities included in the TIR at the time of the distribution or exchange.⁷

c. Changes to IPR and IPS Rules

The Exchange also proposes to amend its existing generic listing standards applicable to IPRs and IPSs in CBOE Rules 31.5.L and 31.5.M, respectively.⁸ among other things, these rules provide that no one component security may exceed twenty-five percent of the weight of the index or portfolio. The Exchange now proposes to increase from twenty-five percent to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio.⁹ The Exchange believes that the proposed rule change will provide additional

⁷ The proposed alternate eligibility requirements are consistent with those currently used by the Amex, which were approved by the Commission on May 16, 2001. See Securities Exchange Act Release No. 44309 (May 16, 2001), 66 FR 28587 (May 23, 2001) (SR-Amex-2001-04).

⁸ The Commission approved the Exchange's generic listing standards applicable to IPRs and IPSs on March 7, 2001. See Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152 (March 15, 2001) (SR-CBOE-00-51).

⁹ The Commission approved a similar rule change proposal by the Amex. See Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25).

⁴ 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

⁵ See Securities Exchange Act Release No. 43134 (August 10, 2000), 65 FR 50255 (August 17, 2000) (SR-CBOE-00-23) ("Original Approval Order").

⁶ The proposed generic listing standards are consistent with those used by the American Stock Exchange ("Amex") and the Chicago Stock Exchange ("CHX"), which were approved by the Commission on September 29, 2000. See Securities Exchange Act Release No. 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (SR-Amex-00-10 and SR-CHX-00-16).

flexibility to unit investment trusts (in cases of IPRs) or mutual funds (in cases of IPSs) to be listed pursuant to Rule 19b-4(e) of the Act in structuring their products and would help reduce possible concerns associated with a single stock exceeding the twenty-five percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. This change would not affect the Internal Revenue Code Subchapter M requirements applicable to regulated investment companies, which continue to require investment companies to rebalance their portfolios quarterly to avoid one component stock exceeding a twenty-five percent weighting in the portfolio in order to maintain regulated investment company status.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed 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 investors and the public interest. Furthermore, the CBOE believes that the proposed rule change will enhance competition for the listing and trading of TIRs, IPRs, and IPSs, which currently are traded on other securities exchanges.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment 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. 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 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. SR-CBOE-2001-48 and should be submitted by November 2, 2001.

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

After careful consideration, 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, and in particular, the requirements of Section 6(b)(5) of the Act.¹² Specifically, the Commission finds that the CBOE's proposal will prevent fraudulent and manipulative acts and practices, 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, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹³

The Commission finds that the proposal to provide generic standards to permit the listing and trading of TIRs pursuant to Rule 19b-4(e) of the Act¹⁴ 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.¹⁵ By establishing generic standards, the proposal should reduce the CBOE's regulatory burden, as well as benefit the public interest, by enabling the CBOE to bring qualifying products to the market

more quickly. Furthermore, the Commission notes that it has previously approved similar proposals by the CHX, the Amex, the Cincinnati Stock Exchange, Inc. ("CSE") and the Pacific Exchange, Inc. ("PCX") to establish generic listing standards for TIRs.¹⁶

Rule 19b-4(e)¹⁷ 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 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.¹⁸

As noted above, the Commission has previously approved the CBOE's proposal to permit the listing and trading of TIRs and to trade nine series of TIRs (Biotech HOLDERS, Internet HOLDERS, Broadband HOLDERS, B2B Internet HOLDERS, Internet Architecture HOLDERS, Internet Infrastructure HOLDERS, Pharmaceutical HOLDERS, Semiconductor HOLDERS, and Telecom HOLDERS) on the Exchange or pursuant to UTP.¹⁹ In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the CBOE's rules and surveillance programs that govern their trading. Securities that satisfy the proposed generic listing standards for TIRs would also allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the TIRs. The Commission therefore finds for these reasons, and the reasons set forth below, that additional TIRs that satisfy the proposed generic standards and, therefore, can be listed pursuant to Rule 19b-4(e) of the Act without prior Commission approval, should produce the same benefits to the CBOE and to

¹² 15 U.S.C. 78f(b)(5).

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

¹⁴ 17 CFR 240.19b-4(e).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ See *supra* note 6, Securities Exchange Act Release Nos. 43604 (November 21, 2000), 65 FR 75746 (December 4, 2000) (SR-CSE-00-05), and 44182 (April 16, 2001), 66 FR 21798 (May 1, 2001) (SR-PCX-2001-01).

¹⁷ 17 CFR 240.19b-4(e).

¹⁸ See *supra* note 4.

¹⁹ See Original Approval Order, *supra* note 5.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

investors. Trading of these products will be subject to the full panoply of CBOE rules and procedures that govern the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.²⁰

The Commission further finds that adopting generic listing standards for these securities and applying Rule 19b-4(e) of the Act should fulfill the intended objective of that rule by allowing those TIR products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) of the Act for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, 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 listing standards through regular inspection oversight.

The Commission further finds that: (1) by requiring that the underlying securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq; and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to insure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIR products listed and traded pursuant to Rule 19b-4(e) of the Act. The Commission finds that these listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Commission further finds that these criteria should serve to ensure that the securities underlying such TIRs are well capitalized and actively traded, which will help ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b-4(e) of the Act.

Additionally, the Exchange's delisting criteria set forth in CBOE Rule 31.94.I allow it to consider the suspension of trading and the delisting of a TIR if an

event occurs that makes further dealings in such securities inadvisable. This will give the CBOE flexibility to delist TIRs if circumstances warrant.

The Commission further notes that, in connection with its previous review and approval of CBOE Rule 31.5.N, it approved the Exchange's surveillance procedures and disclosure and prospectus delivery requirements for TIRs.²¹ In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIRs pursuant to Rule 19b-4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission finds that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading TIRs.

Finally, the CBOE will file Form 19b-4(e)²² with the Commission within five business days of commencement of trading a TIR under the generic standards.²³

Accordingly, the Commission believes that the CBOE's proposed rules governing the listing and trading of TIRs pursuant to Rule 19b-4(e) will 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.²⁴

Furthermore, the Commission finds that the proposal to provide an alternate eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust should enhance competition by enabling the CBOE to better compete with other markets trading TIRs and notes that the Commission has previously approved similar listing standards modifications for the Amex.²⁵

Finally, the Commission finds that the proposal to increase from twenty-five percent to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio of an IPR or IPS should provide additional flexibility to unit investment trusts (in cases of IPRs) or mutual funds (in cases of IPSs) to be listed pursuant to Rule 19b-4(e) of the Act in structuring their products and should help reduce possible concerns associated with a single stock exceeding

the twenty-five percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock.

Furthermore, the Commission notes that it has previously approved a similar proposal by the Amex to increase to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index.²⁶

Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) of the Act,²⁷ to approve the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.²⁸

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-CBOE-2001-48) is hereby approved an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44906; File No. SR-CBOE-2001-53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Allow Spread Orders Involving Certain Broad-Based Index Options and Options on Exchange Traded Funds To Be Executed at a Single Trading Post

October 4, 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 September 20, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

²⁶ See *supra* noted 9.

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ See Original Approval Order, *supra* note 5.

²² 17 CFR 249.820.

²³ See 17 CFR 19b-4(e)(2).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See *supra* note 7.

²⁰ *Id.*