

Current Income Shares, Inc. [File No. 811-2357]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 22, 2002, applicant transferred its assets to HighMark Bond Fund, a series of HighMark Funds, based on net asset value. Expenses of \$291,400 incurred in connection with the reorganization were paid by applicant, HighMark Capital Management, Inc., applicant's investment adviser, and SEI Investments, HighMark Funds' administrator.

Filing Date: The application was filed on September 17, 2002.

Applicant's Address: 445 South Figueroa St., Suite 306, Los Angeles, CA 90071.

Putnam Asia Pacific Growth Fund [File No. 811-6202]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 19, 2002, applicant transferred its assets to Putnam International Growth Fund, based on net asset value. Expenses of \$565,744 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Putnam Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 13, 2002.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Putnam Strategic Income Fund [File No. 811-7221]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2002, applicant transferred its assets to Putnam Diversified Income Trust, based on net asset value. Expenses of \$77,800 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on August 28, 2002.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Intermediate Tax Free Portfolio [File No. 811-6700]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 25, 2000, applicant transferred its assets to Municipal Bond Fund, based on net asset value. Expenses of \$105,875 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on September 3, 2002.

Applicant's Address: One South Street, Baltimore, MD 21202.

Alliance Money Market Fund [File No. 811-8838]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By July 29, 2002, all shareholders of applicant had voluntarily redeemed their shares at net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on August 7, 2002, and amended on September 13, 2002.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Variable Investors Series Trust [File No. 811-4969]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 28, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$55,675 incurred in connection with the liquidation were paid by First Variable Life Insurance Company, the parent of applicant's investment advisor.

Filing Date: The application was filed on August 30, 2002.

Applicant's Address: 2801 Highway 280 South, Birmingham, AL 35223.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-25005 Filed 10-1-02; 8:45 am]

BILLING CODE 8010-01-PY

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46546; File No. SR-CBOE-2002-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Amendments to Its Constitution and Rules Pertaining to the Governance of the Exchange

September 24, 2002.

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 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

"Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend provisions of its Constitution and Rules pertaining to the governance of the Exchange. Below is the text of the proposed rule change. Proposed new language is *italicized*, proposed deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Incorporated**Proposed Governance Amendments to CBOE Constitution and Rules****Constitution**

Article I

Definitions

No change.

Article II

Membership

No change.

Article III

Meetings of Members

Sections 3.1-3.3 No change.

Section 3.4 Special Meetings

Special meetings of members, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman of the Board, the Vice Chairman of the Board [Executive Committee] or the Board of Directors, and shall be called by the Secretary at the request in writing of 150 voting members, provided that such request shall state the purpose or purposes of the proposed meeting and the day and hour at which such meeting shall be held.

Sections 3.5-3.7 No change.

Article IV

Nominations

Section 4.1 Nominating Committee

(a) There shall be a Nominating Committee composed of four members who are primarily engaged in business on the floor of the Exchange in the capacity of a member (floor members) [(except that, as provided in paragraph (b) of this Section 4.1, the Nominating Committee shall have six floor members until the 1999 annual election meeting

and shall have five floor members until the 2000 annual election meeting]); two members who are officers of member organizations that primarily conduct a non-member public customer business (firm members); two members each of whom directly or indirectly owns and controls (as defined in Section 6.1(a)) one or more memberships in respect of which he acts solely as lessor (lessor members), at least one of whom is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934; and two representatives of the public (public members).

(b) All of the members of the Nominating Committee shall be elected by the voting members of the Exchange. [Members of the Nominating Committee elected prior to the 1999 annual election meeting shall continue to serve until the expiration of the terms for which they were elected. The Nominating Committee to serve in respect of the 1999 annual election meeting shall also include two firm members, two lessor members and two public members, all of whom shall be appointed by the Chairman of the Executive Committee with the approval of the Board of Directors.] In the 1999 annual election meeting, one floor member shall be elected for a three year term, and two firm members, two lessor members and two public members shall be elected, one firm member, one lessor member and one public member for terms expiring at the second annual election meeting following the 1999 annual election meeting, and one firm member, one lessor member and one public member for terms expiring at the third annual election meeting following the 1999 annual election meeting. In the 2000 annual election meeting, one floor member shall be elected for a three year term. At each subsequent annual election meeting, members of the Nominating Committee shall be elected to succeed those whose terms expire, each to serve for a term expiring at the third succeeding annual election meeting and until their successors are duly elected and qualified. Elected members of the Nominating Committee shall be ineligible for reelection for a period of three years after their terms expire.

Section 4.2 Nominating Committee Vacancies

Any vacancy occurring among the members of the Nominating Committee may be filled by a qualified person appointed by the Vice Chairman of the Board [Executive Committee] with the

approval of the Board to hold office until the next annual election meeting, at which time a qualified successor shall be elected to serve the unexpired term, if any, of his predecessor in office.

Sections 4.3–4.7 No change.

Article V

Conduct of Annual Election

Section 5.1 Election Committee

The Vice Chairman of the Board [Executive Committee], with the approval of the Board, shall appoint not less than three tellers, none of whom may be a member of the Exchange or a partner or officer of a member organization, who shall constitute a Committee to conduct the annual election. The Committee shall have authority to decide all questions pertaining to the conduct of the annual election, and its decision shall be final.

Sections 5.2–5.3 No change.

Article VI

Board of Directors

Section 6.1 Number, Election and Term of Office of Directors

(a) The Board of Directors shall consist of 22 directors as described below and the Chairman of the Board, who by virtue of his office shall be a member of the Board. [Commencing with the 1999 annual election meeting, t]The Directors elected by the membership shall be divided into three classes *which, commencing with the 2002 annual election meeting, shall be composed as follows:*³

Class I shall consist of one member who directly or indirectly owns and controls a membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member (floor director), [one member who functions as a member in any recognized capacity either individually or on behalf of a member organization (at-large director),] one member who directly or indirectly owns and controls a membership with respect to which he acts solely as lessor and who is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934, (lessor director), [two members who are executive officers of member organizations that

primarily conduct a non-member public customer business and are not individually engaged in business on the Exchange floor (off-floor directors),] and [two] *three* non-members who are not broker-dealers or persons affiliated with broker-dealers (public directors).

Class II shall consist of one floor director, one *member who functions as a member in any recognized capacity either individually or on behalf of a member organization* (at-large director), two *members who are executive officers of member organizations that primarily conduct a non-member public customer business and are not individually engaged in business on the Exchange floor* (off-floor directors) and [three] *four* public directors.

Class III shall consist of two floor directors, one at-large director, two off-floor directors and [three] *four* public directors.

The ordinary place of business of at least one of the two off-floor directors in each Class shall be a location more than 80 miles from the Exchange's trading floor. For purposes of this Section 6.1, a member shall be considered to directly own and control a membership only if the member individually and directly owns of record and beneficially all right, title and interest in the membership, and a member shall be considered to indirectly own and control a membership only if the member (A) has the sole and exclusive right to vote the membership and control its sale, and (B) is in possession of and subject to all of the risks and rewards of a direct owner of at least a fifty percent (50%) interest in a membership, either through ownership of an equity interest in a member organization or of a beneficial interest in a trust, which in either case is the owner of one or more memberships as permitted under the Rules.

(b) The [initial] terms of Class I, Class II and Class III directors shall terminate following the annual election meetings to be held in [1999] *2002*, [2000] *2003* and [2001] *2004*, respectively[, and members of the Board prior to the annual election meeting to be held in 1999 shall be assigned to one of these three Classes on the basis of the year in which their current term of office expires].

³ Prior to the 2002 annual election meeting, the three classes of Directors elected by the membership are composed as follows: Class I: one floor director, one at-large director, one lessor director, two off-floor directors, and two public directors; Class II: one floor director, one at-large director, two off-floor directors, and three public directors; Class III: two floor directors, one at-large director, two off-floor directors, and three public directors.

⁴ Any member serving as a floor director prior to the 1999 annual election meeting shall be permitted to serve out the remainder of his current term of office without regard to whether his business on the floor is conducted "in the capacity of a member."

the directors of each class shall be elected for three year terms to succeed those whose terms are then about to expire, and they shall hold office for the terms for which elected and until their successors shall have been duly elected and qualified, or until their earlier death, resignation or removal. Terms of office of directors shall expire at the first regular meeting of the Board of Directors held on or after January 1 following the annual election meetings at which their successors are elected.

Sections 6.2–6.6 No change.

Section 6.7 Special Meetings

Special meetings of the Board may be called by the Chairman of the Board or the Vice Chairman of the Board [Executive Committee] and shall be called by the Secretary upon the written request of any 4 Directors. The Secretary shall give at least one hour's notice of such meeting to each Director, either by announcement on the Exchange floor during trading hours on business days, or personally, or by mail, telegram or cablegram. Every such notice shall state the time and place of the meeting which shall be fixed by the person calling the meeting, but need not state the purpose thereof except as otherwise required by statute, the Constitution or the Rules.

Sections 6.8–6.11 No change.

Article VII

Committees

Section 7.1 Designation of Committees

The committees of the Exchange shall consist of an Executive Committee, an Audit Committee, a Compensation Committee, a Floor Directors Committee, and such other standing and special committees as may be provided in the Constitution or Rules or as may be from time to time appointed by the Vice Chairman of the Board [Executive Committee] with the approval of the Board. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board [Executive Committee] with the approval of the Board shall appoint the members of all committees and may designate a Chairman and a Vice-Chairman thereof [other than the Chairman of the Executive Committee, who shall be selected as provided in Section 8.1(a) of the Constitution].

Section 7.2 The Executive Committee

The Executive Committee shall consist of the Chairman of the Board, the Vice Chairman of the Board [Executive Committee], and at least 4 other persons appointed as provided in Section 7.1, each of whom must be a Director. Not less than 50%

of the members of the Executive Committee (excluding the Chairman) shall be public directors. Members of the Executive Committee shall not be subject to removal except by the Board. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of this Committee shall be a voting member. The members of the Executive Committee shall serve for a term of one year expiring at the first regular meeting of Directors following the annual election meeting in each year. The Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, except it shall not have the power or authority of the Board in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the members the sale, lease or exchange of all or substantially all of the Exchange's property and assets, recommending to the members the dissolution of the Exchange or a revocation of a dissolution, or amending the Constitution or Rules of the Exchange.

Section 7.3 The Audit Committee

The Audit Committee shall consist of at least three Directors appointed by the Chairman of the Board with the approval of the Board, the exact number to be determined from time to time by the Board. Not less than 50% of the members of the Audit Committee shall be public directors. Members of the Audit Committee shall not be subject to removal except by the Board. The Chairman of the Audit Committee shall be a public director appointed by the Chairman of the Board. The Audit Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.4 The Compensation Committee

The Compensation Committee shall consist of the Vice Chairman of the Board, the lessor director, the Chairman of the Financial Planning Committee, one or more off-floor directors, and such number of public directors that will constitute at least 50% of the members of the Committee. The off-floor director(s) and the public directors shall be appointed to the Compensation Committee by the Chairman of the Board with the approval of the Board. Members of the Compensation Committee shall not be subject to removal except by the Board. The Chairman of the Compensation Committee shall be a public director

appointed by the Chairman of the Board. The Compensation Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.5 The Floor Directors Committee

The Floor Directors Committee shall consist of those Directors who are primarily engaged in business on the floor of the Exchange (whether serving as floor directors or at-large directors), the lessor director as a non-voting member of the Committee, and such other persons as may be appointed as voting or nonvoting members of the Committee by the Vice Chairman of the Board with the approval of the Board. The Vice Chairman of the Board shall be the Chairman of the Floor Directors Committee. The Floor Directors Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.[3]6 Other

All other committees shall have such duties and may exercise such authority as may be prescribed for them in the Constitution or Rules or by resolution of the Board.

Section 7.[4]7 Conduct of Proceedings

Except as otherwise provided in the Certificate of Incorporation, Constitution or Rules, or by resolution of the Board, each committee may determine the manner in which its proceedings shall be conducted. Committees shall keep minutes of their meetings and periodically report their proceedings to the Board of Directors.

Article VIII

Officers

Section 8.1 Designation; Number; Election

(a) The officers of the Exchange shall be a Chairman of the Board, a Vice Chairman of the Board [Executive Committee], a President, one or more Vice-Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other officers as the Board may determine. The Chairman of the Board shall be elected by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Chairman, who shall not vote. Such affirmative vote may also prescribe his duties not inconsistent with the Constitution or Rules and may prescribe a tenure of office.

The *Vice* Chairman of the *Board*[Executive Committee] shall be a director who owns or directly controls his own membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member. He shall be elected by a plurality of members voting at a meeting of the membership held on the 3rd Friday in December of each year (or if that day is not a business day, on the next succeeding business day) and shall serve until his successor is duly chosen and qualified or until his earlier death or his resignation or removal. Once a director has held the office of the *Vice* Chairman of the *Board*[Executive Committee] for six months or more of a one-year term and for the next two succeeding one-year terms, the director shall thereafter be ineligible to again hold the office until a period of not less than six months has elapsed during which the director has not held that office. Candidates for the office of *Vice* Chairman of the *Board*[Executive Committee] must notify the Secretary of the Exchange in writing no later than the close of business on November 23rd (or if that day is not a business day, on the next succeeding business day). In the event there is only one candidate, no election need be held, and the Board of Directors shall declare the office filled by the sole announced candidate.

The remaining officers of the Exchange shall be appointed by the Chairman of the Board, subject to the approval of the Board, at the first regular meeting of the Board of Directors held on or after January 1 following each annual election meeting, each to serve until a successor has been duly chosen and qualified or until the officer's earlier death or resignation or removal.

(b) No officer, other than the *Vice* Chairman of the *Board*[Executive Committee], shall be a member or affiliated with a member or a broker or a dealer in securities or commodities. Two or more offices may be held by the same person, except the offices of Chairman of the Board and President, Chairman of the Board and Secretary, or President and Secretary may not be held by the same person. The compensation of all officers of the Exchange chosen by the Board shall be fixed by the Board.

Section 8.2 No change.

Section 8.3 [Chairman of the Executive Committee/Vice Chairman of the Board]

The *Vice* Chairman [of the Executive Committee (who is also *Vice*-Chairman) of the *Board*] shall preside at meetings of the [Executive Committee and at meetings of the] members. Subject to the approval of the Board, the *Vice*

Chairman of the *Board*[Executive Committee] may appoint standing and special committees unless the method of appointment is otherwise provided for in the Constitution or Rules or in the resolution of the Board establishing the committee. The *Vice* Chairman of the *Board*[Executive Committee] shall be responsible for the coordination of the activities of all committees, *with the exception of committees of the Board, including the Executive Committee, the Audit Committee and the Compensation Committee.* The *Vice* Chairman of the *Board*[He] shall be an ex-officio member, without a right to vote, of all committees, without prejudice to being specifically appointed as a voting member of any committee. In the case of the absence or inability to act of the Chairman of the Board, or in case of a vacancy in the office of the Chairman of the Board, the *Vice* Chairman of the *Board*[Executive Committee] shall exercise the powers and discharge the duties of the Chairman of the Board.

Section 8.4 Acting Chairman

In the absence or inability to act of both the Chairman of the Board and the *Vice* Chairman of the *Board*[Executive Committee], the Board may designate an Acting Chairman of the Board. In the absence of such a designation by the Board, the President, or in his absence or inability to act, the senior available Vice-President, shall assume all the functions and discharge all the duties of the Chairman of the Board.

Section 8.5 Vacancy in Office of Vice Chairman of the Board [Executive Committee]

(a) If the *Vice* Chairman of the *Board*[Executive Committee] shall cease to satisfy the requirements for election to that office, he shall thereupon cease to hold his office and such office shall become vacant, provided that if his membership is suspended he may continue to hold office unless he is removed pursuant to paragraph (a) of Section 8.7.

(b) If a vacancy occurs in the office of *Vice* Chairman of the *Board*[Executive Committee] pursuant to paragraph (a) of this Section or if for any other reason the office becomes vacant, the Board, by the affirmative vote of a majority of the Directors then in office, shall fill such vacancy by the election to such office of a Director then in office who satisfies the requirements for election to such office.

Section 8.6 No change.

Section 8.7 Removals

(a) In the event of the refusal, failure, neglect or inability of the *Vice* Chairman

of the *Board*[Executive Committee] to discharge his duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the *Vice* Chairman of the *Board*[Executive Committee], to remove the *Vice* Chairman of the *Board*[Executive Committee] and declare such office vacant.

(b) Any officer, other than the *Vice* Chairman of the *Board*[Executive Committee], chosen by the Board may be removed at any time by the Board whenever in its judgment the best interests of the Exchange would be served thereby; provided, that the Chairman of the Board or the President may be removed only by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Chairman of the Board, who shall not vote. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(c) Any vacancies occurring in any office of the Exchange at any time may be filled by the Board for the unexpired term.

Sections 8.8–8.10 No change.

Article IX

Indemnification

No change.

Article X

Notices

No change.

Article XI

General Provisions

Sections 11.1–11.3 No change.

Section 11.4 Officers and Employees Restricted

(a) Every salaried officer or employee of the Exchange, except the *Vice* Chairman of the *Board*[Executive Committee], and every salaried officer or employee of any corporation in which the Exchange owns the majority of the stock, shall report promptly to the Exchange every purchase or sale for his or her own account or the account of others of any security which is the underlying security of any option contract admitted to dealings on the Exchange.

(b) With the exception of the *Vice* Chairman of the *Board*[Executive Committee], no salaried officer or employee of the Exchange or salaried officer or employee of any corporation in which the Exchange owns the majority of the corporate stock may

purchase or sell for his or her own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of this Section.

(c) Paragraphs (a) and (b) above of this Section shall not be construed to preclude any salaried officer or employee of the Exchange or of any corporation in which the Exchange owns a majority of the stock from performing his duties and responsibilities as assigned to him by such organization.

Article XII

Amendments

No change.

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Rules

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Chapter II—Organization and Administration

Part A—Committees

Committees of the Exchange

Rule 2.1. Committees of the Exchange

(a) Establishment of Committees. In addition to committees specifically provided for in the Constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, appropriate Floor Procedure Committees, Floor Officials, appropriate Market Performance Committees, Membership, Product Development and such other committees as may be established in accordance with the Constitution. Except as may be otherwise provided in the Constitution or the Rules, [T]the Vice Chairman of the Board[Executive Committee], with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the regular meeting of the Board following the next succeeding Annual Election Meeting or until successors are appointed. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. Except as may be otherwise provided in the Constitution or the Rules, [T]the Vice Chairman of the Board[Executive Committee] may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Vice Chairman of the Board[Executive Committee] for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint

Directors to serve on the Audit and Compensation Committees, whose members shall not be subject to removal except by the Board. Whenever the Vice Chairman of the Board[Executive Committee] is, or has reason to believe he may become, a party to any proceeding of an Exchange committee, he shall not exercise his power to appoint or remove members of that committee, and the Chairman of the Board shall have such power.

(b)–(d) No change.

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Chapter II—Organization and Administration

Part C—Dues, Fees and Other Charges

Liability for Payment

Rule 2.23. A member or associated person that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Vice Chairman of the Board[Executive Committee], who may, after giving reasonable notice to the member or associated person of such arrearages, suspend the member or associated person from membership and association with any member until payment is made. Should payment not be made by a member within 6 months after payment is due, any memberships owned by that member may be disposed of by the Exchange in accordance with Rule 3.14(b). A former member or associated person that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Vice Chairman of the Board[Executive Committee], who may, after giving reasonable notice to the former member or associated person of such arrearages, bar the former member or associated person from becoming a member and associated person until payment is made.

* * * Interpretations and Policies:

01. Reasonable notice under Rule 2.23 shall include, but is not limited to, service on a member or associated person's address as it appears on the books and records of the Exchange either by (1) hand delivery or (2) deposit in the United States post office, postage prepaid via registered or certified mail.

02. The Exchange shall report to the Central Registration Depository operated by the National Association of Securities Dealers, Inc. ("CRD") any suspension or bar imposed pursuant to this Rule.

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Chapter XVI

Summary Suspension by Chairman of the Board or

Vice Chairman of the Board[Executive Committee]

Imposition of Suspension

Rule 16.1. A member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, or a member which is in such financial or operating difficulty that the Chairman of the Board or Vice Chairman of the Board[Executive Committee] determines that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Exchange, may be summarily suspended by the Chairman of the Board or Vice Chairman of the Board[Executive Committee]. In addition, the Chairman of the Board or Vice Chairman of the Board[Executive Committee] may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria or the foregoing sentence is applicable to such person or, in the case of a person who is not a member, if the Chairman of the Board or Vice Chairman of the Board[Executive Committee] determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, members, or the Exchange. In the event a determination is made to take summary action, as described above, notice thereof will be sent to the Securities and Exchange Commission. Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter XIX. In addition, the Securities and Exchange Commission may on its own motion order or such a person may apply to the Securities and Exchange Commission for a stay of such summary action pending the results of a hearing pursuant to Chapter XIX.

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Chapter XXX

Part A—Trading in Stocks, Warrants and Other Securities

Appendix A—Applicability of Rules of the Exchange

This Appendix lists the rules in Chapters I through XIX of the rules of the Exchange that apply to the trading of stock, warrants, and such other

securities instruments and contracts as may be traded subject to the rules in Chapter XXX. Where a rule in Chapter I through XIX is supplemented by a rule in Chapter XXX, that fact is so indicated.

Existing rule by	Supplemented
Chapter I—Chapter 15 Chapter XVI	No Change. Summary Suspension by Chairman of the Board or Vice Cha.
Rule 16.1—Rule 16.5.	No Change.
Chapter XVII—Chapter XIX.	No Change.

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

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

1. Purpose

The purpose of the proposed amendment is to make certain revisions to provisions of the Exchange's Constitution and Rules pertaining to the governance of the Exchange. The principal governance change proposed to be made is to increase the public representation on the Exchange's Board of Directors ("Board") and three committees of the Board so that the Board and these three committees will be balanced between industry (member) and public directors. With respect to the Board, the Exchange proposes to amend Section 6.1 of the Constitution to maintain the current 23-person size of the Board, while increasing the number of public directors from 8 to 11. In order to accommodate the greater number of public directors, the Exchange proposes to reduce the number of off-floor member firm directors from 6 to 4, and to reduce the number of at-large member directors from 3 to 2. The number of floor member directors will remain unchanged at 4 directors, and the Board will continue to have one lessor member director. The Chairman of the Board will continue to serve as an *ex-officio* director. As a result, the Board will be

equally balanced between 11 member directors and 11 public directors plus the Chairman. Directors will continue to be elected for three-year terms, with all categories of directors to be elected by the membership. As a matter of transition, the Exchange proposes to effect the changes with the 2002 annual election of directors.⁵

In addition to changing the composition of the Board, the Exchange proposes to modify the composition of the Executive Committee to make it reflect the same balance and composition as the Board as a whole. To accomplish this, the Exchange proposes to amend Section 7.2 of its Constitution to provide that not less than 50% of the members of the Executive Committee, excluding the Chairman of the Board, will be public directors. Members of the Executive Committee may be removed only by the Board. The Chairman of the Board and the Vice Chairman of the Board will continue to be *ex officio* members of the Executive Committee, with the Chairman of the Board serving as the Chairman of the Executive Committee in place of the Vice Chairman, who currently holds that position.

The Exchange also proposes to codify in the Constitution the establishment of the Audit Committee (Section 7.3), the Compensation Committee (Section 7.4) and the Floor Directors Committee (Section 7.5) as committees of the Board.

The Audit Committee will consist of at least 3 directors of which not less than 50% will be public directors. The members of the Audit Committee will be appointed by the Chairman of the Board, subject to Board approval, as is currently provided in Exchange Rule 2.1, and the Chairman of the Audit Committee will be a public director also appointed by the Chairman of the Board. Members of the Audit Committee may be removed only by the Board.

The Compensation Committee will consist of the Vice Chairman of the Board, the lessor director, the Chairman of the Exchange's Financial Planning

⁵ In 1999, the Exchange amended its Constitution to increase the public representation on its Board of Directors from 4 to 8 public directors, and also to create a lessor director category on the Board. To accommodate the greater number of public directors and the lessor director, the Exchange increased the total size of its Board from 21 to 23 directors, reduced the number of floor directors from 6 to 4, and provided that the President of the Exchange would no longer be an *ex-officio* director. To effectuate these governance changes, the number of off-floor member directors and at-large directors remained unchanged at 6 directors and 3 directors, respectively, and the Chairman continued to serve as an *ex-officio* director. See Securities Exchange Act Release No. 4206 (October 18, 1999), 64 FR 57499 (October 25, 1999).

Committee, one or more off-floor directors, and a number of public directors that will constitute at least 50% of the members of the Committee. The Chairman of the Compensation Committee will be a public director appointed by the Chairman of the Board with the approval of the Board, and the off-floor directors and the public directors on the Compensation Committee will also be appointed by the Chairman of the Board consistent with the Chairman's current authority under Rule 2.1. Members of the Compensation Committee may be removed only by the Board.

The Floor Directors Committee will consist of those directors who are primarily engaged in business on the floor of the Exchange, whether serving as floor directors or at-large directors, and will also include the lessor director as a non-voting member of the Committee. This represents no change from current practice. The Vice Chairman of the Board will be designated in the Constitution as the Chairman of this Committee. The Floor Directors Committee will continue to function as an advisory committee to the Board of Directors and to the Office of the Chairman.

It is also proposed to amend Section 8.3 of the Constitution, which describes the authority of the Vice Chairman of the Board, to make it clear that the authority of that officer to coordinate the activities of the committees of the Exchange does not extend to the Executive, Audit or Compensation Committees of the Board.

In addition to the foregoing proposed changes to the governance provisions of the Constitution, a few "housekeeping" amendments to the Constitution and rules are also proposed. Among these is the proposed deletion of outdated references to members of the Nominating Committee and floor directors who were elected prior to the 1999 annual election in Section 4.1 and in the note to Section 6.1(b) of the Constitution. In addition, because the offices of Chairman of the Executive Committee and Vice Chairman of the Board will no longer be held by the same person, it is proposed to amend a number of provisions in the Constitution and rules that refer to the Chairman of the Executive Committee to make them refer instead to the Vice Chairman of the Board so as not to change their intended meaning.

2. Statutory Basis

The CBOE believes that, by increasing the public representation on the Exchange's Board and three committees of the Board (the Executive, Audit and

Compensation Committees) such that the Board and these three committees are balanced between industry and public directors, and by requiring that the Chairman of the Audit Committee and the Compensation Committee be public directors, the proposed amendment to the Constitution furthers the objectives of Section 6(b)(3) of the Act⁶ to assure fair representation of the members of the Exchange in the selection of its directors and in the administration of its affairs, and to provide that one or more members of the Board of Directors must be representatives of investors (*i.e.*, public directors). The CBOE also believes that the proposed amendment furthers the objectives of Section 6(b)(5) of the Act⁷ to protect investors and the public interest.

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 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

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

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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-2002-48 and should be submitted by October 23, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-25008 Filed 10-1-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46556; File No. SR-CHX-2002-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating To Execution of Limit Orders Following Exempted ITS Trade-Through

September 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantively prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37, which governs, among other

things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through (as defined below). The text of the proposed rule change is available at the Commission and at the CHX.³

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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 August 28, 2002, the Commission issued an order granting a *de minimis* exemption (the "Exemption") for transactions in certain exchange-traded funds ("ETFs") from the trade-through provisions of the Intermarket Trading System ("ITS") Plan.⁴ The Exemption was proposed by Commission staff to permit rapid execution of orders in ETFs at prices that may trade through the quotations of other markets, including the NBBO price. Because Exempted Trade-Throughs will, by definition, be exempt from ITS restrictions, a market participant that reports execution of an Exempted Trade-Through will not be required to satisfy an administrative request from any ITS participant for satisfaction

³ In this submission, the CHX seeks permanent approval of a rule currently in effect on a 30-day pilot basis. See SR-CHX-2002-29.

⁴ See Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002). At present, the exemption extends to transactions in three designated ETFs—the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDS") and the Standard & Poor's 500 Index ("SPDRs")—when the transactions are "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS" (each, an "Exempted Trade-Through"). The exemption was effective as of September 4, 2002.

⁶ 15 U.S.C. 78f(b)(3).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.