

purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the

NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Trust has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 47406; File No. SR-CBOE-2003-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, To Add Two Previously Deleted Interpretations to Rule 5.4

February 26, 2003.

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 February 10, 2003, the Chicago Board Options Exchange, Incorporated ("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 CBOE. CBOE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, to add two previously deleted Interpretations. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose 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 parts 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 Rule 5.4 to add two interpretations that were inadvertently and unintentionally deleted from Rule 5.4 in a prior rule change, SR-CBOE-1997-23.⁵ In 1997, CBOE filed SR-CBOE-97-23, which proposed to make changes to CBOE Rules 5.4, 5.5, 5.6, and 5.7. As noted in that filing, the purpose of that rule change was: (1) To amend the procedures for opening trading in series of equity options under Rules 5.5 and 5.6 in order to allow the Exchange the same flexibility in adding series as permitted under other exchanges' rules; (2) to amend Rules 5.5 and 5.6 to provide specifically in the Rules for near-term options expiration and relieve the Product Development Committee of its responsibility with respect to

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See SEC Rel. No. 34-38743 (June 17, 1997), 62 FR 34332 (June 25, 1997).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

opening series of options; and (3) to clarify and reorganize Rules 5.4, 5.5, 5.6, and 5.7.

In addition, in SR-CBOE-97-23 CBOE also inadvertently and unintentionally deleted from Rule 5.4 two Interpretations that were then numbered .07 and .08. The deletion of these two Interpretations was neither discussed in the proposed rule change CBOE submitted, nor in the SEC order granting accelerated approval of the proposed rule change. Interpretations .07 and .08 read:

.07 When there is no open interest in a series the Exchange may delist such series. Delisting shall be preceded by a notice to member organizations concerning the delisting.

.08 Where a class of options contracts is open for trading on another national securities exchange, the Exchange may delist such class of options contracts. Delisting shall be preceded by a notice to member organizations concerning the delisting.

CBOE now proposes to add former Interpretation .07 to the current version of Rule 5.4 as Interpretation and Policy 12, and to add a new Interpretation and Policy .13 which is nearly identical to former Interpretation .08. In the proposed new Interpretation .13, CBOE describes the process for delisting option classes that are traded on more than one exchange, and also adds language describing the process for delisting option classes that are traded solely on CBOE.

The Exchange notes that proposed new Interpretation .12 is identical to American Stock Exchange Rule 903, Commentary .02 and Pacific Exchange Rule 6.4(a), Commentary .02.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and in demand without sacrificing any investor protection. Accordingly, the proposed rule change is consistent with section 6(b)⁶ of the Act, in general, and furthers the objectives of section 6(b)(5)⁷ in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of 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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹ 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.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,¹⁰ the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the CBOE must file notice of its intent to file the proposed rule change at least five business days beforehand. The CBOE has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.¹¹ The proposal merely replaces rule text that was inadvertently deleted. Also, the proposed rule change is consistent with the rules of other option exchanges that the Commission previously approved. For these reasons, the Commission

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

designates the proposed rule change as effective and operative immediately.

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 section, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file No. SR-CBOE-2003-04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-5082 Filed 3-4-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47410; File No. SR-DTC-2002-13]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Establish the Prospectus Repository System

February 26, 2003.

I. Introduction

On September 11, 2002, The Depository Trust Company filed with the Securities and Exchange Commission ("Commission") a proposed rule change File No. SR-DTC-2002-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on

¹² 17 CRF 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).