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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of February 2003.

For the Nuclear Regulatory Commission.  
**Michael E. Mayfield,**

*Director, Division of Engineering Technology,  
Office of Nuclear Regulatory Research.*

[FR Doc. 03-5162 Filed 3-4-03; 8:45 am]

BILLING CODE 7590-01-P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

#### Summary of Proposal(s)

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC-1.

(3) *OMB Number:* 3220-0012.

(4) *Expiration date of current OMB clearance:* 05/31/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 550.

(8) *Total annual responses:* 2,200.

(9) *Total annual reporting hours:* 917.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751-3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 03-5084 Filed 3-4-03; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47407; File No. 10-135]

### Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Island Futures Exchange, LLC

February 26, 2003.

Section 6(g) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission ("Commission") if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act.<sup>2</sup> Rule 6a-4 under the Exchange Act<sup>3</sup> requires that such an exchange submit written notice

<sup>1</sup> 15 U.S.C. 78f(g).

<sup>2</sup> 7 U.S.C. 7a.

<sup>3</sup> 17 CFR 240.6a-4.

of registration to the Commission on Form 1-N.<sup>4</sup> An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1-N.<sup>5</sup>

On February 19, 2003, the Island Futures Exchange, LLC ("Island") filed a Form 1-N with the Commission. Pursuant to Section 6(g)(3) of the Exchange Act,<sup>6</sup> the Commission hereby acknowledges receipt of the Form 1-N submitted by Island. Copies of the Form 1-N submitted by Island, including all exhibits, are available in the Commission's Public Reference Room, File No. 10-135.

For questions regarding this Release, contact: Jennifer Colihan, Special Counsel at (202) 942-0735, or Mia Zur, Attorney at (202) 942-7309; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-5157 Filed 3-4-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release Number IC-25948; 812-12546]

### Rydex ETF Trust, et al.; Notice of Application

February 27, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain equity securities indexes, to issue shares of limited redeemability; (b)

<sup>4</sup> Upon receipt of a Form 1-N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

<sup>5</sup> Section 6(g)(2)(B) of the Exchange Act.

<sup>6</sup> 15 U.S.C. 78f(g)(3).

<sup>7</sup> 17 CFR 200.30-3(a)(77).

secondary market transactions in the shares of the series to occur at negotiated prices on The Nasdaq Stock Market ("Nasdaq") or a national securities exchange (each, a "Listing Market"); (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

**APPLICANTS:** Rydex ETF Trust ("Trust"), Rydex Distributors, Inc. ("Distributor"), PADCO Advisors II, Inc. ("Adviser").

**FILING DATES:** The application was filed on June 8, 2001, and amended on February 24, 2003 and February 27, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202) 942-0528, or Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized

as a Delaware statutory trust. The Trust is organized as a series investment company with one portfolio (the "Initial Fund" and together with the "Future Funds," as defined below, the "Funds"). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser to the Funds. The Adviser may, in the future, enter into subadvisory agreements with additional investment advisers to act as subadvisers with respect to particular Funds. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will be the principal underwriter and distributor of the shares of each Fund ("Shares").

2. Each Fund will invest in a portfolio of equity securities generally consisting of the component securities of a specified equity securities index (an "Underlying Index").<sup>1</sup> The Initial Fund will be based on the Equal Weighted S&P 500 Index. In the future, applicants expect to offer multiple series based on other equity securities indices (each, a "Future Fund"). Any Future Fund will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of this application. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, a subadviser or promoter of a Fund, or the Distributor.

3. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout regular trading hours on the Listing Market. A Fund will utilize either a replication strategy or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy generally will invest in substantially all of the component securities of its Underlying Index in the same approximate proportions as in the Underlying Index. When a component security is illiquid or when there are

<sup>1</sup> At least 90% of each Fund's total assets (exclusive of collateral held from securities lending) will be invested in the component securities of its Underlying Index. Each Fund may also invest up to 10% of its total assets in stocks that are not included in the Underlying Index, futures contracts, options on futures contracts, options and swaps related to its Underlying Index, and cash and cash equivalents.

practical difficulties or substantial costs involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy where it holds a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.<sup>2</sup> Applicants anticipate that a Fund using the representative sampling technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants anticipate that, over time, the expected tracking error of a Fund using the representative sampling technique will not exceed 5%, net of fees or expenses.

4. Shares will be issued in aggregations of at least 50,000 or more ("Creation Units"). The price of a Creation Unit will range from \$3,000,000 to \$5,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a Depository Trust Company ("DTC") participant that has executed a participation agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also may sell Creation Units on a "cash only" basis in limited circumstances. A person purchasing a Creation Unit from a Fund must make a "Creation Deposit" consisting of: (a) securities selected by the Adviser to correspond to the price and yield performance of the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment equal to the difference between the market value of the Deposit Securities and the net asset value ("NAV") of a Creation Unit ("Cash Amount").<sup>3</sup> An investor purchasing or

<sup>2</sup> Securities selected for inclusion in a Fund by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Underlying Index taken in its entirety.

<sup>3</sup> On each day that the Listing Market is open for business ("Business Day"), the Adviser will make available through the National Securities Clearing Corporation ("NSCC"), prior to the opening of trading on the Listing Market, the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund as well as information regarding the Cash Amount. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. A purchasing investor may be permitted or required to substitute an amount of cash or a different security for a Deposit Security in certain circumstances. The Listing Market will disseminate every 15 seconds throughout the regular trading hours of the Listing Market, an amount representing on a per Share

redeeming Creation Units from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs incurred by the Fund in connection with the purchase and redemption of the Creation Units.<sup>4</sup> Each Fund will provide complete disclosure about the Transaction Fee in its prospectus, including the maximum amount of the Transaction Fee, and the method of calculating the Transaction Fee will be disclosed in the Trust's statement of additional information ("SAI").

5. Orders to purchase Creation Units must be placed with the Distributor who will be responsible for transmitting the orders to the relevant Fund. The Distributor will maintain a record of Creation Unit purchases and send out confirmations to purchasers. The Distributor will also furnish a copy of the Fund's prospectus to those placing purchase orders.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Market, which will either be Nasdaq or a national securities exchange as defined in section 2(a)(26) of the Act, and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms of the Listing Market will act as a market maker or specialist ("Market Maker") and maintain a market on the Listing Market for the Shares.<sup>5</sup> The price of Shares traded on a Listing Market will be based on a current bid/offer market. Each Share is expected to have a market value of between \$60 and \$100. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Market Maker, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units in connection with its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional

and retail investors.<sup>6</sup> Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV, will ensure that the market price of Shares will not vary much from its NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit in most cases will receive a portfolio of securities ("Redemption Securities") plus a balancing cash amount representing the difference between the NAV of a Creation Unit and the market value of the Redemption Securities. As with purchases, a redeeming investor will pay a Transaction Fee. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is unable, by law or policy, to own a particular Redemption Security.

9. Applicants state that neither the Trust nor any Fund will be advertised, marketed, or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund and the Trust will be marketed as a "Nasdaq-traded fund," "exchange-traded fund," "investment company," "fund," and "trust" without reference to an "open-end fund" or "mutual fund," except to compare and contrast the Trust and the Funds with conventional open-end investment companies. All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units or Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in each Fund's prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

#### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act; and under

sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

#### Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of Shares will not vary much from its NAV.

#### Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at an offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

basis the sum of the current value of the Deposit Securities and the estimated Cash Amount.

<sup>4</sup> Where a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

<sup>5</sup> The listing requirements established by Nasdaq require that at least two market makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

<sup>6</sup> Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial owners of Shares.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares will not cause dilution for owners of Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces, such as supply and demand and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of Shares and their NAV remains narrow.

#### *Section 24(d) of the Act*

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>7</sup>

<sup>7</sup> Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of shares from the Fund or an underwriter. Applicants state that a Fund's prospectus will caution persons purchasing Creation Units that some activities on their part may, depending on the circumstances,

8. Applicants state that Shares will be listed on a Listing Market and will be traded in a manner similar to other equity securities. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be listed on a Listing Market, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Trust (or the Listing Market) also intends to maintain a website that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the closing NAV and the reported closing price. The website for the Trust will also include, for each Fund, on a per Share basis, (a) a calculation of the premium or discount of the closing price against NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will

result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. Each Fund's prospectus also will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market.

#### *Sections 17(a)(1) and (2) of the Act*

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that with respect to one or more Funds and the Trust, a large institutional investor, including a Market Maker, could own 5% or more or in excess of 25% of the outstanding Shares of a Fund or the Trust, making that investor an affiliated person of the Fund or Trust. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit persons that are affiliated persons of a Fund or the Trust solely by virtue of a 5% or more or in excess of a 25% ownership interest (and affiliated persons of such affiliated persons that are not otherwise affiliated with such Fund or Trust) to purchase and redeem Creation Units through in-kind transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund or the Trust described above from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind

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.

[FR Doc. 03-5156 Filed 3-4-03; 8:45 am]

**BILLING CODE 8010-01-P**

## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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.<sup>5</sup> 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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.