material, non-public information by it employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of $289.537 billion to a low of $0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7,503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Exchange equity margin rules and debt trading rules will apply to the Securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential from manipulation of the underlying securities is minimal, thereby protecting investors and the public interest. The Commission further notes that the Index is managed by the S&P, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's ''Other Securities'' listing standards further require that the Notes have a market value of at least $4 million.[22] In any event, financial information regarding CSFB, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.[23]

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[24] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[25] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[26] to approve the proposal, as amended, on an accelerated basis.

[22] *See* Company Guide Section 107A.

[23] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[24] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq–100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[25] *See* supra note 20.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2003–45), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[28]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–14646 Filed 6–10–03; 8:45 am]

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[26] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47957; File No. SR–CBOE–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Marketing Fee Procedures

May 30, 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 May 13, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change by the CBOE, which relates to marketing fee procedures. At the same time, the Commission is adopting the proposed rule change as a pilot program on an accelerated basis.

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

The CBOE hereby proposes to adopt, on a pilot basis, a new Interpretation and Policy .12 to CBOE Rule 8.7 specifying the procedures by which a trading crowd may determine whether to participate in the CBOE's marketing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fee program.[3] The text of the proposed rule change is available at the 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, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Effective August 1, 2001, the CBOE suspended its $.40 per contract marketing fee.[4] As described in SR–CBOE–2003–19,[5] the CBOE has determined to reinstate its marketing fee program, and proposes to adopt the procedures set forth in proposed new Interpretation and Policy .12 to CBOE Rule 8.7 to specify how a trading crowd determines whether or not to participate in the marketing fee program. The CBOE proposes to institute these procedures on a pilot basis to expire one year after Commission approval. The Exchange has requested that the Commission approve the pilot program on an accelerated basis so that it can compete effectively with other exchanges that have marketing fee programs.

As described in SR–CBOE–2003–19, the marketing fee will be assessed only on those market-maker transactions (including DPMs) resulting from orders from customers of payment-accepting firms with which the DPM has agreed to pay for that firm's order flow. In the instant filing, the CBOE proposes that after the marketing fee initially has been in effect for three consecutive calendar months with respect to the option classes located at a particular trading station, the members of a trading crowd may determine not to continue participating in this marketing fee program pursuant to the procedures proposed to be set forth in Interpretation .12 to CBOE Rule 8.7, as described below. The CBOE asserts that these procedures are substantially the same as the procedures contained in Interpretation and Policy .03 to CBOE Rule 8.95. These procedures were utilized by trading crowds in 1999 to indicate that they no longer wish to trade an option class opened for trading prior to May 1, 1987.[6]

The Exchange states that two procedural aspects of the administration of the trading crowd vote are embodied in proposed Interpretation and Policy .12 to CBOE Rule 8.7: (i) To define which trading crowd[7] members are entitled to participate in the vote; and (ii) to adopt voting procedures to be used for purposes of determinations made under the rule. The CBOE states that proposed Interpretation and Policy .12 provides that eligible trading crowd members are those market-makers in the subject trading crowd who have transacted at least 80% of their market-maker contracts and transactions in each of the three immediately preceding calendar months in option classes traded at that trading crowd's station, and who continue to be present in the trading crowd in the capacity of a market maker at the time of the vote.[8] According to the CBOE, this assures that only those members who are currently engaged as market makers in that trading crowd, and who have concentrated their activity in that trading crowd over the last three months, participate in the vote.

Process To Request a Vote

The CBOE asserts that the DPM or any eligible trading crowd member may request that a vote be held by submitting a written request to that effect to the Secretary of the Exchange. The Exchange will provide at least ten calendar days' posted notice to the trading crowd of the time and date of the vote. The Secretary of the Exchange will verify that the member requesting a vote is an eligible trading crowd member and will keep the identity of such individual confidential.

Trading Crowd Participating in Marketing Fee Program

The CBOE states that after a trading crowd has participated in the marketing fee program for the initial three consecutive calendar month period, the trading crowd may determine to opt-out of the program. Proposed Interpretation and Policy .12 to CBOE Rule 8.7 provides that a trading crowd will be deemed to have indicated that it does not wish to continue participating in the marketing fee program only if: (i) The question is put to a vote of the eligible trading crowd members;[9] (ii) a majority of the eligible trading crowd members participate in the vote; and (iii) a majority of the votes cast are in favor of not participating in the marketing fee program. In the event the vote of the members of the trading crowd is tied, the marketing fee program will remain in effect in that trading crowd for the next three consecutive months.

Trading Crowd Not Participating in Marketing Fee Program

According to the Exchange, twenty days after a trading crowd votes not to participate in the marketing fee program, any eligible trading crowd member may then request that another vote be held to determine whether the trading crowd should participate in the marketing fee program.[10] In this case, if a majority of the votes cast are in favor of participating in the marketing fee program, the trading crowd will be deemed to have indicated that it wishes to participate in the marketing fee program and the marketing fee program will be in effect in that trading crowd for the next three consecutive months. In the event that the vote of the members of the trading crowd is tied, the trading crowd will be deemed to have indicated that it does not wish to participate in the marketing fee program.

The CBOE asserts that these voting procedures are substantially similar to

[3] The CBOE recently reinstated its payment for order flow program. *See* Exchange Act Release No. 47948 (May 30, 2003) (SR–CBOE–2003–19).

[4] *See* Exchange Act Release No. 44717 (August 16, 2001), 66 FR 44655 (August 24, 2001), (SR–CBOE–2001–43).

[5] *See* Exchange Act Release No. 47948 (May 30, 2003), (SR–CBOE–2003–19).

[6] *See* Exchange Act Release No. 41641 (July 22, 1999), 64 FR 41477 (July 30, 1999), granting immediate effectiveness to SR–CBOE–99–31.

[7] CBOE Rule 8.8.01 provides that the term ''trading crowd'' is synonymous with the term trading ''station.'' That rule defines ''station'' as ''a location on the trading floor, at which classes of option contracts are traded, which classes of options compose all or part of a market maker appointment. An appointment must at least include all of the classes of options traded at one station.'' The same definition of ''trading crowd'' applies to proposed Interpretation and Policy .12 to CBOE Rule 8.7.

[8] The CBOE represents that it routinely monitors market maker trading activity for purposes of determining compliance with CBOE Rule 8.7.03 appointment and in-person trading requirements. Additionally, the CBOE represents that it has committed to monitor market maker trading activity for purposes of determining compliance with the electronic quoting requirements proposed in CBOE–2002–05 (the Hybrid Trading System). As such, the CBOE believes that it has the capability to determine who constitutes an eligible trading crowd member for purposes of this rule filing.

[9] The DPM is considered an eligible trading crowd member and, as such, may (but is not required to) participate in the vote. The DPM entity is entitled to only one vote regardless of the number of nominees or representatives it employs in the trading crowd.

[10] The CBOE notes that actual votes may only be held once every thirty days. Because there is a ten calendar day notice period prior to a vote, however, an eligible trading crowd member may request a vote twenty days after the preceding vote.

the procedures set forth in CBOE Rule 8.95.03 and the procedures set forth in CBOE Rule 2.40(d) concerning recommendations of a market-maker surcharge under that rule. In other respects, a marketing fee oversight committee of the CBOE shall determine administrative procedures for conducting the vote. If a payment accepting firm materially changes its execution status or a DPM transfers its DPM appointment to a separate organization pursuant to CBOE Rule 8.89, any member of the eligible trading crowd may then request that a vote be held to determine whether or not the trading crowd should participate in the marketing fee program by conducting a vote pursuant to the above procedures.

2. Statutory Basis

The CBOE believes that proposed Interpretation .12 to CBOE Rule 8.7 will provide fair and orderly procedures for the administration of the marketing fee program that the CBOE has determined to reinstate, and thus is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act [11] to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market.

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.

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

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

III. 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 number SR–CBOE–2003–20 and should be submitted by July 2, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that this proposal, which allows the appropriate trading crowd to determine after a three-month period whether to continue to participate in the Exchange's marketing fee program, promotes member participation in the procedures of the Exchange. Further, the Commission notes that the contemplated voting procedures are substantially similar to the voting procedures contained in CBOE Rules 8.95.03 and 2.40(d), which have previously been reviewed by the Commission.

Finally, the Commission notes that the Exchange is proposing to institute these procedures as a pilot program that will expire one year after Commission approval, or such earlier time as the Commission has approved the procedures on a permanent basis.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.**

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

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[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

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

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47978; File No. SR–DTC–2003–02]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers

June 4, 2003.

I. Introduction

On February 3, 2003, The Depository Trust Company filed with the Securities and Exchange Commission (''Commission'') and on February 11, 2003, amended proposed rule change SR–DTC–2003–02 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 February 22, 2003.[2] Eighty-nine comment letters were received.[3] For the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47365, (February 13, 2003), 68 FR 8535 (February 21, 2003).

[3] Letters from H. Glenn Bagwell, Jr., Esq. (March 6, 2003); Bruce Barrett (March 4, 2003); Bruce M. Barrett (March 19, 2003); Cristy Barrett (March 13, 2003); Jake Barrett (March 13, 2003); Robert D. Becker, Senior Vice President, National City Bank (March 18, 2003); Lester Bianco, Director, Ingalls & Snyder LLC (April 4, 2003); Pete Bowman, Managing Director, First Clearing Corporation (March 18, 2003); Michael R. Brennan, Vice President and Managing Director of Operations, Ameritrade, Inc. (April 28, 2003); Earl D. Bukolt, Managing Director and Chief Operating Officer, Sterne, Agee & Leach, Inc. (April 21, 2003); Leonard W. Burningham, Esq. (March 21, 2003); Leonard W. Burningham, Esq. (March 22, 2003); Leonard W. Burningham, Esq. (March 24, 2003); Neil C. Carfora, Senior Vice President, State Street Corporation (March 11, 2003); Mark Cashion (March 6, 2003); David L. Cermak, Senior Vice President and Director of Operations, RBC; Dain Rauscher (April 21, 2003); Frank M. Ciavarella, Cashiers Division, Prudential Securities Incorporated (April 3, 2003); John Cirrito, Senior Managing Director and Chief Operating Officer, ING Financial Markets LLC (March 17, 2003); Kevin Cundy (March 6, 2003); Richard J. Curran, Director, Credit Suisse First Boston LLC (April 14, 2003); Dennis Dejose (March 8, 2003); Patricia Dowd, Patricia Dowd Inc. (March 5, 2003); Paul A. Ebeling (March 11, 2003); Harry Filowitz, Vice President, Mizuho Trust & Banking Co. (USA) (April 7, 2003); Mary L. Forgy, Chairperson, Bank Depository User Group (March 14, 2003); Mary L. Forgy, Union Planters Trust & Investment Group (March 13, 2003); Susan A. Gessman, Assistant Vice President of Operations, Raymond James and Associates (April 25, 2003); Russell Godwin, President, Medinah Minerals Inc. (March 13, 2003); Jeff Hamel, President, Cashiers' Association of Wall Street, Inc. (March 18, 2003); Edward Hazel, Managing Director, Spear, Leeds & Kellogg (April 9, 2003); James Hendricks (March 8, 2003); Joseph Hoofnagel, Jr. (March 8, 2003); Gordon D. House (March 6, 2003); Tom Ittner, Director, National Financial Services LLC (March 17, 2003); Kent N. Jacobson, President and Chief Executive Officer, James Barclay Alan Inc. (March 7, 2003); Peter Johnston, Managing Director, Goldman, Sachs & Co. (March 24, 2003); Jack

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