

is under common control with a Manager.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-34256 Filed 12-24-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26955]

### Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

December 18, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by *January 13, 1999*, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After *January 13, 1999*, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Interstate Energy Corporation

[70-9401]

Interstate Energy Corporation ("Interstate"), 222 West Washington Avenue, Madison, Wisconsin 53703-0192, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act, and rules 42, 46 and 54 under the Act.

Interstate proposes to adopt a stockholder rights plan ("Plan") and to

enter into a rights agreement ("Agreement"). Under the Plan, Interstate's board of directors ("Board") proposes to declare a dividend of one right ("Right") for each outstanding share of Interstate common stock, \$.01 par value ("Common Stock"). The dividend will be payable to stockholders of record on a record date yet to be determined. Each Right would entitle the holder to purchase one-half of a share of Common Stock at a price of \$47.50 per one-half share of Common Stock, subject to adjustment ("Purchase Price").

The Rights may not be exercised until the "Distribution Date," which is defined in the Agreement as the earlier of two dates. The first is ten days after the first public announcement that any person, group or other entity ("Person") has acquired, or obtained the right to acquire or to vote, beneficial ownership of 15% or more of Common Stock (such Person, an "Acquiring Person" and such event, an "Acquisition Event"). The second is ten business days (unless extended by the Board) after any Person has commenced, or announced an intention to commence a tender or exchange offer which would, upon its consummation, result in the Person becoming an Acquiring Person.

After the Distribution Date, each Right holder may exercise a Right, upon payment of the Purchase Price, to receive Common Stock (or, in certain circumstances, cash, property, other Interstate securities or a reduction in the Purchase Price) having a value equal to two times the Purchase Price. Under certain circumstances where Interstate is acquired in a business combination transaction with, or fifty percent or more of its assets or earning power is sold or transferred to, another company ("Acquiring Company"), exercise of a Right at the Purchase Price will entitle its holder to receive common stock of the Acquiring Company also having a value equal to twice the Purchase Price. Rights beneficially owned by any Acquiring Person will be null and void.

The Purchase Price, the number of shares of Common Stock covered by each Right and the number of Rights outstanding are subject to adjustment from time to time to prevent dilution. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least one percent in the Purchase Price.

The Agreement may be amended prior to the Distribution Date by Interstate without the consent of the holders of Common Stock. After the Distribution Date, Interstate generally may amend the Agreement to correct ambiguities or

defective provisions consistent with the interests of holders, to shorten or lengthen any time period in the Agreement or to otherwise change or add to the provisions of the Agreement, so long as the change or addition does not adversely affect the Rights holders (other than an Acquiring Person).

At any time after any Person becomes an Acquiring Person and before any Person (not including, among others, Interstate or any of its subsidiaries) acquired, or obtained the right to acquire or to vote, beneficial ownership of fifty percent or more of the outstanding shares of Common Stock, the Board may exchange the Rights (other than Rights owned by an Acquiring Person), in whole or in part, at an exchange ratio of one Common Share per Right, subject to adjustment.

Interstate may redeem all of the Rights at a redemption price of \$.001 per Right, subject to adjustment ("Redemption Price"), at any time prior to the date that any Person has become an Acquiring Person. Immediately following Interstate's public notice of an action by the Board Interstate ordering the redemption of the Rights or the exchange of any of the Rights, the right to exercise the Rights will terminate and a Rights holder will be entitled only to receive the Redemption Price or exchanged shares of Common Stock, as the case may be.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-34205 Filed 12-24-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40809; File No. SR-Amex-98-34]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Listing and Trading of Shares of the Nasdaq-100 Trust

December 18, 1998.

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 September 21, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below,

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

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

which Items have been prepared by the self-regulatory organization. On December 16, 1998, the Exchange submitted to the Commission Amendments No. 1 and 2 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

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

The Amex proposes to list and trade under Amex Rules 1000 *et seq.*, Nasdaq-100® Shares, units of beneficial interest in the Nasdaq-100® Trust. The text of the proposed rule change is available at the Office of the Secretary, Amex 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 self-regulatory organization 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 self-regulatory organization 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 December 11, 1992,<sup>4</sup> the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of Portfolio Depositary Receipts ("PDRs"<sup>SM</sup>), securities which represent interests in a unit investment trust ("Trust") operating on an open-end basis and that hold a portfolio of securities.<sup>5</sup> Each Trust is intended to

<sup>3</sup> The Exchange filed Amendment No. 1 to the original proposal to clarify the nature and operation of the Nasdaq-100 Trust shares ("Amendment No. 1"). See Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Market Regulation, Commission, dated December 16, 1998. In Amendment No. 2, the Exchange discusses the basis for the mandatory termination date of the Trust. ("Amendment No. 2"). See Letter from Mike Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Hong-anh Tran, Staff Attorney, Market Regulation, Commission, dated December 16, 1998.

<sup>4</sup> See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) ("SPDRs Order").

<sup>5</sup> "PDRs" is a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust to be formed in connection with the issuance of PDRs was based on the Standard & Poor's 500 Index ("S&P 500 Index"), known as Standard & Poor's Depositary Receipts® ("SPDRs"), which have been trading on the Exchange since January 29, 1993.<sup>6</sup> In 1995, the Commission approved Amex's listing and trading of PDRs based on the Standard & Poor's MidCap 400 Index™ ("MidCap SPDRs").<sup>7</sup> In January 1998, the Commission approved the listing and trading of PDRs based on the Dow Jones Industrial Average<sup>SM</sup> ("DIAMONDS").<sup>8</sup>

The Exchange now proposes to list and trade under Rules 1000 *et seq.* Nasdaq-100 Shares (referred to herein as "Trust shares"), units of beneficial interest in the Nasdaq-100 Trust, Series 1, a unit investment trust based on the Nasdaq-100 Index® ("Nasdaq-100 Trust" or "Trust").<sup>9</sup> The Trust Sponsor, Investment Product Services, Inc., which is wholly-owned by The Nasdaq Stock Market, Inc. ("Nasdaq"), will enter into a trust agreement with The

<sup>6</sup> See SPDRs, Order, *supra* note 4.

<sup>7</sup> See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) ("MidCap SPDRs Order"). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts,"<sup>®</sup> "SPDRs,"<sup>®</sup> "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of The McGraw-Hill Companies, Inc. and are being used by the Exchange and the Sponsor under license among Standard & Poor's, a division of The McGraw-Hill Companies, Inc., the Exchange and the Sponsor. "SPDRs" and "MidCap SPDRs" are not sponsored, endorsed, sold, or promoted by S&P, and S&P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

<sup>8</sup> See Securities Exchange Act Release No. 39525 (January 8, 1998) 63 FR 2438 (January 15, 1998) ("DIAMONDS Order"). "Dow Jones Industrial Average,"<sup>SM</sup> "DJIA,"<sup>SM</sup> "Dow Jones"<sup>SM</sup> and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Exchange and the Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product. The Sponsor for the SPDR, MidCap SPDR, and DIAMONDS Trust is PDR Services LLC.

<sup>9</sup> The "Nasdaq-100 Index,"<sup>®</sup> "Nasdaq-100,"<sup>®</sup> "Nasdaq,"<sup>®</sup> and "The Nasdaq Stock Market"<sup>®</sup> are trademarks of Nasdaq and have been licensed for use for certain purposes by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq. The specific name of the Trust and units of beneficial interest based on the Nasdaq-100 Index is subject to change and any such change will be filed with the Commission as an amendment hereto.

Bank of New York as trustee (the "Trustee") in accordance with Section 26 of the Investment Company Act of 1940.<sup>10</sup> A distributor will act as underwriter of the Nasdaq-100 Trust on an agency basis. All orders to create Trust shares in Creation Unit size aggregations must be placed with the distributor, and it will be the responsibility of the distributor to transmit such orders to the Trustee. The distributor is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc.

*The Nasdaq-100 Index*<sup>®</sup><sup>11</sup>. The Nasdaq-100® ("Index") constitutes a broadly diversified segment of the largest and most actively traded securities listed on the Nasdaq Stock Market. Additionally, the Index has achieved wide acceptance by both investors and market professionals. Specifically, the Index is composed of 100 of the largest and most actively traded non-financial companies listed on the Nasdaq National Market tier of the Nasdaq Stock Market.

The Index was first published in January 1985, and includes companies across a variety of major industry groups. The major industry groups covered in the Index are: computer and office equipment, computer and software/services, telecommunications, retail-wholesale trade, biotechnology, services, health care, manufacturing, and transportation. The five largest companies represented in the Index as of December 14, 1998 are as follows: Microsoft Corporation, Intel Corporation, Cisco Systems Inc., Dell

<sup>10</sup> An Application for Orders pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") has been filed with respect to the Trust (the "Application"). In the interest of facilitating secondary market transactions in Trust shares, the Application seeks, among other things, an order (1) permitting secondary market transactions in Trust shares at negotiated prices rather than at a current public offering price described in the prospectus and based on current net asset value as required by Section 22(d) of the 1940 Act and Rule 22c-1 thereunder; and (2) permitting the sale of Trust shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act of 1933 but may be required according to Section 24(d) of the 1940 Act for redeemable securities issued by a unit investment trust. In addition a registration statement on Form S-6, including a preliminary prospectus for the Trust (No. 333-61001), has been filed with the Commission. These exemptions, if granted, will permit individual Trust shares to be traded in secondary market transactions similar to a closed end investment company. Both the Application and the registration statement provide additional detail relating to a number of the procedures referenced in SR-Amex-98-34.

<sup>11</sup> The description of the Nasdaq-100 Index herein as well as discussion of eligibility criteria, annual ranking review, ongoing index administration, and Index rebalancing are based on materials prepared by The Nasdaq Stock Market.

Computer Corporation and MCI WORLDCOM, Inc. Current information regarding the market value of the Index is available from Nasdaq as well as numerous market information services. The index is determined, composed, and calculated by Nasdaq without regard to the Trust.

At any moment in time, the value of the Index equals the aggregate value of the then-current Index share weights (described below) of each of the component 100 securities in the Index (the "Index Securities") multiplied by each such security's respective last sale price on the Nasdaq Stock Market, and divided by a scaling factor (the "divisor") which becomes the basis for the reported Index value. The divisor serves the purpose of scaling such aggregate value (otherwise in the hundreds of billions) to a lower order of magnitude which is more desirable for index reporting purposes.<sup>12</sup>

The Index share weights of the component securities of the Index at any time are based upon the total shares outstanding in each of the 100 Index Securities and will be additionally subject (prior to the issuance of Trust shares) to rebalancing to ensure that the relative weighting of the Index Securities continues to meet minimum pre-established requirements for a diversified portfolio (see "Rebalancing of the Index"). Accordingly, each Index Security's influence on the value of the Index is directly proportional to the value of its Index share weight. At any time at which the composition and/or Index share weights are adjusted as described herein, a new divisor will be determined and become effective so as to offset the change in aggregate value of the Index Securities in order to ensure the continuity of the value of the Index in connection with such adjustment.

*Index security eligibility criteria and annual ranking review.* To be eligible for inclusion in the Index, a security must be traded on the Nasdaq National Market tier of the Nasdaq Stock Market and meet the following criteria:

- The security must be of a non-financial company;
- Only one class of security per issuer is allowed;
- The security may not be issued by an issuer currently in bankruptcy proceedings;

- The security must have average daily trading volume of at least 100,000 shares per day;

- The security must have "seasoned" on the Nasdaq Stock Market or another recognized market (generally, a company is considered to be seasoned by Nasdaq if it has been listed on a market for at least two years; in the case of spin-offs, the operating history of the spin-off will be considered);

- If a security would otherwise qualify to be in the top 25% of the issuers included in the Index by market capitalization, the "seasoning" criteria would not apply; and

- If the security is of a foreign issuer, the company must have a worldwide market value of at least \$10 billion, a U.S. market value of at least \$4 billion, and average trading volume on the Nasdaq Stock Market of at least 200,000 shares per day; in addition, foreign securities must be eligible for listed options trading.

The Index Securities are evaluated annually based on market data as of the end of October as follows (such evaluation is referred to herein as the "Annual Ranking Review"). Securities listed on the Nasdaq Stock Market which meet the above eligibility criteria are ranked by market value as of the end of October. Index-eligible securities which are already in the Index and which are in the top 150 eligible securities (based on market value) are retained in the Index provided that such security was ranked in the top 100 eligible securities as of the previous year's annual review. Securities not meeting such criteria are replaced. The replacement securities chosen are those Index-eligible securities not currently in the Index which have the largest market capitalization. The list of annual additions and deletions is publicly announced via a press release in the early part of December. Replacements are made effective after the close of trading on the third Friday in December. Moreover, if at any time during the year an Index Security is no longer traded on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index and meeting the Index eligibility criteria listed above.

*Ongoing index administration.* In addition to the Annual Ranking Review, the securities in the Index are monitored every day by Nasdaq with respect to changes in total shares outstanding arising from secondary offerings, stock repurchases, conversions, or other corporate actions. Periodically

(typically, several times per quarter), Nasdaq may determine that total shares outstanding have changed in one or more Index Securities as a result of such events and Nasdaq has adopted the following quarterly scheduled weight adjustment procedures with respect to such changes. If the change in total shares outstanding arising from such corporate action is greater than or equal to 5.0%, such change is ordinarily made to the Index on the evening prior to the effective date of such corporate action. Otherwise, if the change in total shares outstanding is less than 5.0%, then all such changes are accumulated and made effective at one time on a quarterly basis after the close of trading on the third Friday in each of March, June, September, and December. In either case, the Index Share weights for such Index Securities are adjusted by the same percentage amount by which the total shares outstanding have changed in such Index Securities. Ordinarily, whenever there is a change in Index share weights or a change in a component security included in the Index, Nasdaq adjusts the divisor to assure that there is no discontinuity in the value of the Index which might otherwise be caused by any such change.

As noted above, Nasdaq may also during each quarter (ordinarily, several times per quarter) replace one or more component securities in the Index due to mergers, acquisitions, bankruptcies, or due to delistings if an issuer chooses to list its securities on another marketplace, or if the issuers of such component securities fail to meet the eligibility criteria for continued inclusion in the Index.

*Rebalancing of the Index.* Effective on December 18, 1998, the Index will be calculated under a "modified capitalization weighted" methodology, which is a hybrid between equal weighting and conventional capitalization weighting. This methodology is expected to: (1) Retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest component securities from necessary weight rebalancings.

Specifically, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures (see "Ongoing Index Administration"), the Index Securities are categorized as either "Large Stocks" or "Small Stocks" depending on

<sup>12</sup> For example, on November 12, 1998, the aggregate value of the then-current Index share weights of each of the Index Securities multiplied by their respective last sale price on the Nasdaq Stock Market was \$1,218,098,456,568, the divisor was 830,593,408, and the reported Index value was 1,466.54.

whether their current percentage weights (after taking into account such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (i.e., as a 100-stock index, the average percentage weight in the Index is 1.0%).

Such quarterly examination will result in an index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization stock in the Index must be less than or equal to 24.0% and (2) the "collective weight" of those stocks whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%.

If either one or both of these weight distribution requirements are not met upon quarterly review, a weight rebalancing will be performed in accordance with the following plan. First, relating to weight distribution requirement (1) above, if the current weight of the single largest stock in the Index exceeds 24.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by enough for the adjusted weight of the single largest stock to be set to 20.0%. Second, relating to weight distribution requirement (2) above, for those stocks where individual current weights or adjusted weights in accordance with the preceding step are in excess of 4.5%, if their "collective weight" exceeds 48.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by just enough for the "collective weight," so adjusted, to be set to 40.0%.<sup>13</sup>

The aggregate weight reduction among the Large Stocks resulting from either or both of the above rescalings will then be redistributed to the Small Stocks in the following iterative manner. In the first iteration, the weight of the largest Small Stock will be scaled upwards by a factor which sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by the same factor reduced in relation to each stock's relative ranking among the Small Stocks such that the smaller the stock in the ranking, the less the scale-up of its weight. This is intended to reduce the market impact of

the weight rebalancing on the smallest component securities in the Index.

In the second iteration, the weight of the second largest Small Stock, already adjusted in the first iteration, will be scaled upwards by a factor which sets it equal to the average index weights of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by this same factor reduced in relation to each stock's relative ranking among the Small Stocks such that, once again, the smaller the stock in the ranking, the less the scale-up of its weight.

Additional iterations will be performed until the accumulated increase in weight among the Small Stocks exactly equals the aggregate weight reduction among the Large Stocks from rebalancing in accordance with weight distribution requirement (1) and/or weight distribution requirement (2) above.

To complete the rebalancing procedure, once the final percent weights of each stock in the Index are set, the Index share weights will be determined anew based upon the last sale prices and aggregate capitalization of the Index at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December. Changes to the Index share weights will be made effective after the close of trading on the third Friday in March, June, September, and December and a corresponding adjustment to the Index divisor will be made to ensure continuity of the Index. Such changes to the Index share weights would result either from (1) adjustments to reflect changes in total shares outstanding in one or more Index Securities made during Nasdaq's quarterly scheduled weight adjustment procedures (see "Ongoing Index Administration"), (2) changes effective in the quarter ending in December in connection with the Annual Ranking Review (see "Index Security Eligibility Criteria and Annual Ranking Review"); or (3) changes based on the rebalancing of the Index in accordance with procedures described above.<sup>14</sup>

<sup>14</sup> Effective on December 21, 1998, Nasdaq will be maintaining two versions of the Nasdaq-100 Index, calculated based on (1) conventional capitalization weighting and (2) modified capitalization weighting. Nasdaq-100 Index options listed for trading on the Chicago Board Options Exchange ("CBOE") prior to December 21, 1998, (whose expiration dates extend as far out as March 1999) will continue to be based on the conventional capitalization weighted version. Nasdaq-100 Index options listed for trading on the CBOE on or after December 21, 1998, will be based on the modified capitalization weighted version. After expiration of March index option contracts on March 20, 1999,

*The Nasdaq-100 Trust.* To be eligible to place orders to create Trust shares, as described below, an entity or person must either be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create Trust shares, the distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of Trust shares to the account of the entity placing the order. Trust shares will be registered in book entry only, which records will be kept by DTC.

Payment with respect to creation orders placed through the distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is substantially similar in composition to the component shares of the underlying index or portfolio; and, in addition, (2) an amount equal to the "Income Net of Expense Amount," plus or minus, as the case may be, the "Balancing Amount." The "Income Net of Expense Amount" is an amount equal, on a per Creation Unit basis, to the dividends accumulated in respect of the securities held in the Trust from the most recent ex-dividend date for Trust shares through and including the day on which the creation order is placed, net of accrued expenses and liabilities of the Trust for such period. The "Balancing Amount" serves the function of compensating for any differences between (1) the value of the portfolio of securities deposited with the Trustee in connection with a creation of Trust shares, together with the Income Net of Expense Amount, and (2) the net asset value of the Trust on a per Creation Unit basis. The "Income Net of Expense Amount" and the "Balancing Amount" are collectively referred to as the "Cash Component" in the Trust Application and registration statement, and the deposit of a specified portfolio of securities (as referenced above) and the Cash Component are collectively referred to as a "Portfolio Deposit." On any given day, the Cash Component of the Portfolio Deposit may be payable either by the Trustee on behalf of the Trust to the creator of Trust shares, or by the creator of Trust shares to the Trustee on behalf of the Trust, depending on the respective amounts of

the Index version based on the conventional weighting method will no longer be calculated. At all times, the Trust intends to replicate the composition and weighting of the Nasdaq-100 Index based on the modified capitalization weighting method.

<sup>13</sup> By applying the weight rebalancing methodology, the Trust is able to meet, among other things, certain diversification tests which enable the trust to maintain its tax treatment as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended.

the "Income Net of Expense Amount" and the "Balancing Amount."

In connection with redemptions of Creation Unit size aggregations of Trust shares, the redeeming party receives a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as in effect on the date a request for redemption is deemed received by the Trustee, in addition, in certain cases, to a "Cash Redemption Amount" (as defined in the Trust prospectus) which is typically identical to the amount of the "Cash Component," as in effect on such date. The "Cash Redemption Amount" will either be paid to the Trustee on behalf of the Trust by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust, again depending upon the respective amounts of the "Income Net of Expense Amount" and the "Balancing Amount," as described in the Trust prospectus.

The mandatory termination date of the Trust will be the first to occur of (i) a date in 2123 or (ii) the date 20 years after the death of the last survivor of fifteen (15) specified persons named in the Trust Agreement between the Trust Sponsor and the Trustee, the oldest of whom was born in 1986 and the youngest of whom was born in 1996.<sup>15</sup>

*Issuance.* Upon receipt of a Portfolio Deposit in payment for a creation order placed through the distributor as described above, the Trustee will issue a specified number of Trust shares which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that, with respect to the Nasdaq-100 Trust, a Creation Unit will be made up of 50,000 Trust shares.

Individual Trust shares can then be traded in the secondary market like other equity securities. It is expected that Portfolio Deposits will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. The Trust has been structured to provide for the initial issuance of Trust shares at a per share price which would approximate 1/20th of the prevailing value of the Nasdaq-100 Index. As of November 12, 1998, it is estimated that the value of an individual Trust share would be approximately \$74 (1/20th of the prevailing value of the Index on such date).

<sup>15</sup>The SEC staff notes that Amex has stated that the basis of the mandatory termination date of the Trust is to comply with the common law rule against perpetuities which provides, in brief, that no estate is valid unless it must vest not later than twenty-one years after lives in being at the creation of the estate, and that any future or present estate is void in its creation if it suspends the absolute power of alienation longer than this period. See Amendment No. 2, *supra* note 3.

The Trust sponsor, Investment Product Services, Inc., intends to make available itself, or by other persons designated to do so by the Sponsor, a list of the names and the required number of shares for each of the securities in the current Portfolio Deposit. The Trust Sponsor also intends to make available through the facilities of the Amex on each Business Day the Income Net of Expense Amount effective through and including the previous business day per outstanding Trust share. The Sponsor may also choose within its discretion to make available, frequently throughout each business day, a number representing, on a per Trust share basis, the sum of the Income Net of Expense Amount effective through and including the previous business day plus the current value of the securities portion of a Portfolio Deposit as in effect on such day (which value will occasionally include a cash-in-lieu amount to compensate for the omission of a particular Index Security from such Portfolio Deposit). If the Sponsor elects to make such information available, it would be calculated based upon the best information available to the Sponsor and may be calculated by other persons designated to do so by the Sponsor (e.g., the Amex). In addition, the Trust will make available to NSCC prior to commencement of trading on each business day a list of the names and required number of shares of each of the Index Securities in the current Portfolio Deposit as well as the Income Net of Expense Amount for the previous business day.

Transactions in Trust shares may be effected on the Exchange until 4:15 p.m. New York time each business day. The minimum fractional change for Trust shares shall be 1/64 of \$1.00.

*Redemption.* Trust shares in Creation Unit size aggregations generally will be redeemable in kind by tendering them to the Trustee. While holders may sell Trust shares in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem through the Trust. Trust shares will remain outstanding until redeemed or until the termination of the Trust. Creation Unit size aggregations of Trust shares generally will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust typically identical in composition and weighting to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together, in certain cases, with a "Cash Redemption Amount" (as referred to above), including accumulated dividends, less accrued expenses and

liabilities of the Trust, through the date of redemption, which will either be paid to the Trustee by the redeemer or paid to the redeemer by the Trustee on behalf of the Trust depending upon the respective amounts of the "Income Net of Expense Amount," and the "Balancing Amount," as described previously. The number of shares of each of the securities transferred to the redeeming holder generally will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all Trust shares delivered upon redemption.

The Trustee, in its discretion, upon the request of the redeeming investor, may redeem Creation Units in whole or in part by providing such redeemer with a portfolio of securities differing in exact composition and weighting from the Index Securities but not differing in net asset value from the then current net asset value of Trust shares. Such a redemption is likely to be made only if it were to be determined that this composition would be appropriate in order to maintain the portfolio of the Trust in correlation to the composition and weighting of the Index, for instance, in connection with a replacement of one of the Index Securities (e.g., due to a merger, acquisition, or bankruptcy, or in connection with the rebalancing of the Index).

*Distributions.* Distributions by the Trust will be made quarterly in the event that dividends accumulated in respect of the Trust securities and other income, if any, received by the Trust, exceed Trust fees and expenses accrued during the quarter. Based on historical dividend payment rates of the portfolio of stocks comprising the index and estimated ordinary operating expenses of the Trust, little or no such distributions are currently anticipated. The regular quarterly Ex-Dividend Date with respect to net dividends, if any, for the Trust will be the third Friday in each of March, June, September, and December, unless such day is not a business day, in which case the Ex-Dividend Date will be the immediately preceding business day. However, there shall be no net dividend distribution in any given quarter, and any net dividend amounts will be rolled into the next quarterly accumulation period, if the aggregate net dividend distribution would be in an amount less than 5/100 of one percent (0.05%) of the net asset value of the Trust as of the Friday in the

week immediately preceding the Ex-Dividend Date, unless the Trustee determines that such net dividend distribution is required to be made in order to maintain the Trust's status as a regulated investment company or to avoid the imposition of income or excise taxes on undistributed income.

Beneficial owners as reflected on the records of the Depository and the DTC Participants on the second business day following the ex-dividend date (the "record date") are entitled to receive an amount, if any, representing dividends accumulated through the quarter, net of the fees and expenses of the Trust, accrued daily for such period. For the purposes of such distributions, dividends per Trust share are calculated at least to the nearest 1/100th of \$0.01. When net dividend payments are to be made by the Trust, payment will be made on the last business day in the calendar month following each Ex-Dividend Date (the "Dividend Payment Date"). Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with funds received from the trustee. The Sponsor reserves the right to make the DTC Dividend Reinvestment Service (the "Service") available in the future for use by Trust shareholders through DTC Participants for reinvestment of their periodic cash distributions, if any. In the event the Service is made available, not all DTC Participants may choose to utilize this Service and an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through such broker, as well as applicable procedures.

*Criteria for initial and continued listing.* Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading. For Trust shares, it is anticipated that a minimum of 150,000 Trust shares (*i.e.*, three Creation Units of 50,000 Trust shares each), will be required to be outstanding when trading begins.

The Trust will be subject to the initial and continued listing criteria of Rule 1002(b). Rule 1002(b) provides that, following twelve months from the formation of a trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of a trust when, in its opinion, further dealing in such

securities appears unwarranted under the following circumstances:

(a) if the trust has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) if the index on which the trust is based is no longer calculated; or

(c) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A trust shall terminate upon removal from Exchange listing and its PDRs shall be redeemed in accordance with provisions of the trust prospectus. A trust may also terminate under such other conditions as may be set forth in the trust prospectus. For example, the Sponsor, following notice to Trust shareholders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust is below a specified amount. The Trust may also terminate if the license agreement with Nasdaq terminates.<sup>16</sup>

*Trading halts.* Prior to commencement of trading in Trust shares, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in PDRs, including Trust shares. These factors include, but are not limited to (1) the extent to which trading is not occurring in stocks underlying the Index; and (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>17</sup>

In addition, trading in Trust shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached. The triggering of futures price limits for index futures contracts such as Nasdaq 100 Index futures, will not, in itself, require a halt in Trust shares trading or a delayed opening. However, such an event could be considered by the Exchange along with other factors, such as a halt in Nasdaq-100 or other broad-based index options

<sup>16</sup> With respect to the Trust, the Sponsor has the discretionary right to direct the Trustee to terminate the Trust if at any time after six months following and prior to three years following the inception of the Trust the net asset value falls below \$150,000,000, or if at any time on or after three years following inception of the Trust the net asset value of the Trust is below \$350,000,000 in value, adjusted annually for inflation.

<sup>17</sup> See Amex Rule 918C.

trading, in deciding to halt trading in Trust shares or other index-based derivative securities.

*Terms and characteristics.* Under Amex Rule 1000, Commentary .01, Amex members and member organizations are required to provide to all purchasers of Trust shares a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also requires that such description be included with any sales material on the Trust that is provided to customers or the public. In addition, the Exchange requires that members and member organizations provide customers the prospectus for the Trust upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase Trust shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations.

Prior to commencement of trading of Trust shares, the Exchange will distribute to Exchange members and member organizations an Information Circular calling attention to characteristics of the Trust and to applicable Exchange rules.

*Stop and stop limit orders.* Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated PDRs (of which Trust shares are PDRs), as eligible for this treatment.<sup>18</sup>

*Other applicable rules.* Like SPDRs, MidCap SPDRs, and DIAMONDS, trading in Trust shares on the Amex will be subject to the provisions of Amex Rules 1000 et seq. and regular Exchange

<sup>18</sup> See Securities Exchange Act Release No. 39607 (February 2, 1998), 63 FR 6587 (February 9, 1998) (File No. SR-Amex-98-04), regarding the designation of PDRs as eligible for stop and stop limit order election under Amex Rule 154(c). See also Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR-Amex-90-31) regarding election of stop and stop limit orders by quotation for certain derivative equity securities designated by the Exchange as eligible for such election.

equity trading rules will apply, including Exchange rules relating to priority, parity and precedence and the obligations of specialists. The provisions of Amex Rule 411 (Duty to Know and Approve Customers) apply to customer transactions in Portfolio Depository Receipts, and would therefore apply to Trust units transactions; no enhanced suitability standards are applicable to such securities.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Exchange believes that PDRs, generally, and Trust shares specifically, have the potential to benefit the markets by providing an alternate trading instrument, such as those encouraged by the Division of Market Regulation in its report, "The October 1987 Market Break," that may help temper market volatility and reduce stress on individual index component stocks during unusual market conditions.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

## 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 self-regulatory organization 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, N.W., Washington, D.C. 20549. 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 Amex. All submissions should refer to the File No. SR-Amex-98-34 and should be submitted by January 19, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-34251 Filed 12-24-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40808; File No. SR-CBOE-98-52]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to a Change in the Frequency of the Rebalancing of the Dow Jones High Yield Select 10 Index**

December 18, 1998.

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 December 18, 1998 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.<sup>3</sup> 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 change the frequency of its rebalancing of the Dow Jones High Yield Select 10 Index ("Index"), a narrow-based index on which the Exchange has received approval to trade options.<sup>4</sup> In addition, the CBOE proposes to amend Rule 24.9(c) to provide for additional quarterly index expiration dates for the options ("QIX").<sup>5</sup>

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, the Exchange 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 Exchange 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*

##### I. Purpose

The CBOE proposes to change the frequency of its rebalancing of the Dow Jones High Yield Select 10 Index, a narrow-based index on which the Exchange received approval to trade

<sup>3</sup> The CBOE originally submitted the proposal on November 19, 1998. On December 18, 1998, the CBOE submitted a letter from Stephanie C. Mullins, Attorney, CBOE, to Katherine England, Assistant Director, Division of Market Regulation, Commission (December 18, 1998) ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes to amend Rule 24.9(c) to provide for additional quarterly index expiration dates for the options. Because this filing was filed pursuant to Section 19(b)(3)(A) of the Act, it must be complete at the time it is filed. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

<sup>4</sup> See Securities Exchange Act Release No. 39453 (December 16, 1997) 62 FR 67101 (December 23, 1997) (notice of filing and immediate effectiveness of SR-CBOE-97-63).

<sup>5</sup> See note 3, *supra*.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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