

through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day afterwards: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition will no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will be limited to 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. All loans may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations and declaration of trust. No Fund may borrow through the Credit Facility unless the Fund has a fundamental policy that prevents the Fund from borrowing for other than temporary or

emergency purposes (and not for leveraging), except that certain Funds may engage in reverse repurchase agreements for any purpose.

11. The Cash Management Department will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Department will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Cash Management Department will invest amounts remaining after satisfaction of borrowing demand in FICASH or money market funds that are advised by FMR or return remaining amounts for investment directly by the portfolio managers of the Funds.

12. FMR will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make quarterly report to the Board and each Fund concerning the participation of the Funds in the Credit Facility and the terms and other conditions of any extensions of credit thereunder.

13. Each Fund's Board, including a majority of the trustees who are not interested persons of the Funds as defined in section 2(a)(19) of the Act ("Independent Trustees"), will: (a) Review, no less frequently than quarterly, the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and (c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the Credit Facility.

14. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan agreement, FMR will promptly refer the loan for arbitration to a retired Independent Trustee previously selected by the Board of each Fund, who no longer has any fiduciary responsibilities to any Fund, and who will serve as an arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The

arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the Credit Facility occurred, the first two years in an easily accessible place, written records of all transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and any other information presented to the Fund's Boards in connection with the review required by conditions 12 and 13.

16. Compliance with the conditions to any order issued on the application will be considered by the external auditors as part of their internal control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N-SAR.

17. No Fund will be permitted to participate in the Credit Facility unless it has fully disclosed in its registration statement all material facts about its intended participation.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 00-19093 Filed 7-27-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43043; File No. SR-CBOE-00-25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Trade Standardized Equity Options on Trust Issued Receipts

July 17, 2000.

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 June 23, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The CBOE proposes to adopt new listing and maintenance standards to allow the Exchange to trade standardized equity options on trust issued receipts. The text of the proposed rule change follows. *Italics* indicate text to be added.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 5.3 Criteria for Underlying Securities

(a)–(b) Unchanged.

* * * *Interpretations and Policies*

.01–.06 Unchanged.

.07 *Securities deemed appropriate for options trading shall include shares or other securities ("Trust Issued Receipts") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent ownership of the specific deposited securities held by a trust, provided:*

(a)(i) the Trust Issued Receipts meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 to this Rule 5.3; or

(ii) the Trust Issued Receipts must be available for issuance or cancellation each business day from the Trust in exchange for the underlying deposited securities; and

(b) not more than 20% of the weight of the Trust Issued Receipt is represented by ADRs on securities for which the primary market is not subject to a comprehensive surveillance agreement.

* * * * *

Rule 5.4 Withdrawal of Approval of Underlying Securities

Unchanged.

* * * *Interpretations and Policies*

.01–.08 Unchanged.

.09 *Absent exceptional circumstances, securities initially*

approved for options trading pursuant to Interpretation and Policy .07 under Rule 5.3 (such securities are defined and referred to in that Interpretation and Policy as "Trust Issued Receipts") shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Trust Issued Receipts, whenever the Trust Issued Receipts are delisted and trading in the Receipts is suspended on a national securities exchange, or the Trust Issued Receipts are no longer traded as national market securities through the facilities of a national securities association. In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Trust Issued Receipts in any of the following circumstances:

(1) In accordance with the terms of paragraphs (a) through (g) of Interpretation and Policy .01 of this Rule 5.4 in the case of options covering Trust Issued Receipts when such options were approved pursuant to paragraph (a)(i) of Interpretation and Policy .07 under Rule 5.3;

(2) The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(3) The Trust has fewer than 50,000 receipts issued and outstanding,³

(4) The market value of all receipts issued and outstanding is less than \$1,000,000; or

(5) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

.10 For Holding Company Depositary Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) the proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

* * * * *

³ The Exchange has confirmed that "Trust" should be capitalized in the proposed rule text. Telephone conversation between Angelo Evangelou, Attorney, Legal Division, CBOE, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on July 12, 2000.

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

The purpose of the proposed rule change is to provide for the trading of options, including FLEX equity options,⁴ on exchange-listed trust issued receipts. The Exchange believes that the listing and maintenance criteria proposed in its new rule are consistent with the options listing and maintenance criteria for trust issued receipts currently used by the American Stock Exchange LLC ("Amex").⁵ Trust issued receipts are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of trust issued receipts is similar to that of exchange-traded fund shares, which also may be created on any business day upon deposit of the requisite securities comprising a creation unit.⁶ The trust will only issue receipts upon the deposit of the shares of underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may

⁴ FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style and certain exercise prices.

⁵ The Amex provisions were approved by the Commission on June 15, 2000. See Securities Exchange Act Release No. 42947 (June 15, 2000), 65 FR 39211 (June 23, 2000) (SR-Amex-99-37).

⁶ The Exchange received approval to trade options on exchange-traded fund shares on July 2, 1998. See Securities Exchange Act Release No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998).

obtain, hold, trade or surrender trust issued receipts in a round-lot and round-lot multiples of 100 receipts.

Generally, options (including FLEX equity options) on trust issued receipts are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities or indexes of equity securities. The Exchange will list option contracts covering 100 trust issued receipts, the minimum required round-lot trading size for the underlying receipts. Strike prices for the non-FLEX contracts will be set to bracket the trust issued receipts at the same intervals that apply to other equity options under CBOE Rule 5.5 (*i.e.*, 2½ point intervals for underlying equity values up to \$25; 5 point intervals for underlying equity values greater than \$25 up to \$200; and 10 point intervals for underlying equity values greater than \$200). The proposed position and exercise limits for non-FLEX options on trust issued receipts would be the same as those established for other non-FLEX equity options, as set forth in CBOE Rule 4.11. The Exchange anticipates that most options on trust issued receipts will initially qualify for the lowest position limit. However, as with other equity options, applicable position limits will be increased for options if the volume of trading in the trust issued receipts increases to the extent needed to permit a higher limit. As is the case of all FLEX equity options, no position and exercise limits will be applicable to FLEX equity options overlying trust issued receipts.

The listing and maintenance standards proposed for options on trust issued receipts are set forth respectively in proposed Interpretation and Policy .07 under CBOE Rule 5.3, and in proposed Interpretation and Policy .09 under CBOE Rule 5.4. Pursuant to the proposed initial listing standards, the Exchange will list only trust issued receipts that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (i) The trust issued receipts meet the uniform options listing standards in Interpretation and Policy .01 of CBOE Rule 5.3, which include criteria covering the minimum public float, trading volume, and share price of the underlying security in order to list the option;⁷ or (ii) the trust issued receipts

must be available for issuance or cancellation each business day from the trust in exchange for the underlying deposited securities.

In addition, listing standards for options on trust issued receipts will require that any American Depositary Receipts (ADRs) in the portfolio on which the Trust is based for which the securities underlying the ADRs' primary markets are in countries that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20 percent of the weight of the portfolio.

The Exchange's proposed maintenance standards provide that if a particular series of trust issued receipts should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the trust issued receipts, and all such options will trade on a liquidation-only basis (*i.e.*, only closing transactions to permit the closing of outstanding open options positions will be permitted). In addition, the Exchange will consider the suspension of opening transactions in any series of options of the class covering trust issued receipts if: (i) For options on trust issued receipts that were listed pursuant to the equity option listing standards of Interpretation and Policy .01 of CBOE Rule 5.3, the options fail to meet the option maintenance standards in Interpretation and Policy .01 of CBOE Rule 5.4;⁸ (ii) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of trust issued receipts for 30 or more consecutive trading days; (iii) the trust has fewer than 50,000 receipts issued and outstanding; (iv) the market value of all receipts issued and outstanding is less than \$1,000,000; or (v) such other event shall occur or condition exists that, in the opinion of the Exchange, makes further dealing in such options on the Exchange inadvisable. Furthermore, the Exchange will not open additional series of options on any Holding Company Depositary Receipts ("HOLDRs") a type of trust issued

calendar months preceding the date of the selection, and that the issuer of the underlying security is in compliance with the Act.

⁸ Specifically, Interpretation and Policy .01 of CBOE Rule 5.4 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (i) There are fewer than 6,300,000 publicly held shares; (ii) there are fewer than 1,600 holders; (iii) trading volume was less than 1,800,000 shares in the preceding twelve months; and (iv) the share price of the underlying security closed below \$5 on a majority of the business days during the preceding six months.

receipt, without prior Commission approval, if: (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80 percent (as measured by the relative weightings in the HOLDRs trust);⁹ or (2) less than 80 percent of the number of securities held by a HOLDR trust underlie standardized options.

Options on trust issued receipts will be physically settled and will have the American-style exercise feature used on all non-FLEX equity options, and not the European-style feature. The Exchange, however, also proposes to trade FLEX equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX equity features.¹⁰

The proposed margin requirements for options on trust issued receipts are at the same levels that apply to options generally under CBOE Chapter 12, except, with respect to trust issued receipts based on a broad-based portfolio, minimum margin must be deposited and maintained equal to 100 percent of the current market value of the option plus 15 percent of the market value of equivalent units of the underlying security value. Trust issued receipts that hold securities based upon a narrow-based portfolio must have options margin that equals at least 100 percent of the current market value of the contract plus 20 percent of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on trust issued receipts are comparable to margin requirements that currently apply to broad-based and narrow-based index options. Also, holders of options on trust issued receipts who exercise and receive the underlying trust issued receipts must receive a product description or prospectus, as appropriate.

Lastly, the Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the trading of options on HOLDRS.

⁹ The Exchange represents that the weight of each security in a HOLDR trust will be determined by calculating the sum of the number of shares of each security (represented in a single HOLDR) and underlying options multiplied by its respective share price divided by the sum of the number of shares of all securities (represented in a single HOLDR) multiplied by their respective share prices.

¹⁰ An American-style option may be exercised at any time prior to its expiration, while a European-style option may be exercised only at its expiration date.

⁷ Specifically, Interpretation and Policy .01 of CBOE Rule 5.3 requires the underlying security to have a public float of 7,000,000 shares, 2,000 holders, trading volume of 2,400,000 shares in the preceding 12 months, a share price of \$7.50 for the majority of the business days during the three

2. Statutory Basis

The CBOE believes that, by providing investors with a better means to hedge their positions in the underlying trust issued receipts, as well as an alternative market center in which to trade these products, thereby increasing competition, the proposed rule change is consistent with Section 6(b)(5) of the Act.¹¹ Section 6(b)(5) requires that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. CBOE-00-25 and should be submitted by August 18, 2000.

¹¹ 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).¹² The Commission notes that it has previously approved similar listing standards proposed by the Amex for options on trust issued receipts, and believes that the CBOE's proposal contains adequate safeguards, matching those previously approved.¹³ As the Commission found in its previous approval of the listing standards proposed by the Amex, the listing and trading of options, including FLEX equity options on exchange-traded trust issued receipts, should give investors a better means to hedge their positions in the underlying trust issued receipts. The Commission also believes that pricing of the underlying trust issued receipts may become more efficient, and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on trust issued receipts likely will engender the same benefits to investors and the marketplace that exist with respect to options on common stock, thereby serving to promote the public interest, to remove impediments to a free and open securities market, and to promote efficiency, competition, and capital formation.¹⁴

The Commission finds that the Exchange's listing and delisting criteria for options on trust issued receipts are adequate. The proposed listing and maintenance requirements should ensure that there exist adequate supplies of the underlying trust issued receipts in case of the exercise of an option, and a minimum level of liquidity to control against manipulation and to allow for the maintenance of fair and orderly markets. The CBOE's additional requirements for opening additional series or options on HOLDERS will also ensure that the underlying securities are options eligible, and for the most part will satisfy minimum thresholds previously approved by the Commission.

The Commission also believes that the surveillance standards developed by the

¹² *Id.*

¹³ See *supra* note 5.

¹⁴ 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).

CBOE for options on trust issued receipts are adequate to address the concerns associated with the listing and trading of such securities. The CBOE's proposal to limit the weight of the portfolio that may be composed of ADRs whose primary markets are in countries that are not subject to comprehensive surveillance agreements is similar to that previously approved by the Commission.¹⁵ As to domestically traded trust issued receipts themselves and the domestic stocks in the underlying portfolio, the Intermarket Surveillance Group ("ISG") Agreement will be applicable to the trading of options on trust issued receipts.¹⁶

Finally, the Commission believes that the CBOE's proposed margin requirements are appropriate. The Commission notes that they are comparable to margin requirements that currently apply to broad-based and narrow-based index options, and to those previously approved for use at the Amex.¹⁷

The Commission finds good cause for approving the proposed rule change (SR-CBOE-00-25) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** under Section 19(b)(2) of the Act.¹⁸ As noted above, the trading requirements for options on trust issued receipts at the CBOE will be substantially similar to those at the Amex, which the Commission has approved.¹⁹ The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed and should benefit holders of trust issued receipts by permitting them to use options to manage the risks of their positions in the receipts. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁰ to approve the proposal on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CBOE-00-25) is hereby approved on an accelerated basis.

¹⁵ See *supra* note 5.

¹⁶ ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

¹⁷ See *supra* note 5.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ See *supra* note 5.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jonathan G. Katz,
Secretary.

[FR Doc. 00-19054 Filed 7-27-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43056; File No. SR-CBOE-99-15]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Membership Rules

July 19, 2000.

I. Introduction

On April 12, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to revise the CBOE's membership rules. The CBOE amended its proposal on July 15, 1999, November 3, 1999, and April 26, 2000.³

Notice of the proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on November 18, 1999.⁴ The Commission received no comment letters regarding the proposal. This order approves the proposal, as amended. In addition, the Commission is publishing notice to solicit comments

on, and is simultaneously approving, on an accelerated basis, Amendment No. 3 to the proposal.

II. Description of the Proposal

As described below, the CBOE proposes to make extensive changes to revise and update its membership rules.

A. Definitions

The CBOE proposes to amend the definition of "lessor" in CBOE Rule 1.1(ff) to clarify that a member organization that is a lessor of an Exchange membership may transact business with the public, provided the organization is approved to do so pursuant to CBOE Rule 9.1, "Exchange Approval." Specifically, CBOE proposes to delete the second sentence of CBOE Rule 1.1(ff) because the CBOE believes that the sentence could be ready to imply that a lessor member organization is not permitted to transact business with the public.

The CBOE proposes to amend the definition of "nominee" in CBOE Rule 1.1(pp) to: (1) Clarify that under the CBOE's rules, as amended, not all nominees are required to have an authorized floor function,⁵ and (2) eliminate a provision in the current definition indicating that all nominees shall be deemed to be Exchange members because CBOE Rule 3.8(b), as amended, states that a nominee of a member organization approved to act solely as a lessor shall be deemed an associated person of the organization and not an individual member.

B. CBOE Rules 3.1, 3.2, and 3.3

The CBOE proposes to revise CBOE Rule 3.1, "Public Securities Business," to clarify that the members referred to in subparagraphs (b)(1)(i) and (b)(1)(ii) are member organizations. CBOE Rule 3.1(b)(1)(i) refers to member organizations approved to transact business with the public in accordance with CBOE Rule 9.1, and CBOE Rule 3.1(b)(ii) refers to member organizations approved to clear Exchange transactions.

In addition, the CBOE proposes to delete CBOE Rule 3.1(b)(2), which requires compliance with Section 11(a) of the Act⁶ for the following reasons: (1) CBOE Rule 4.2, "Adherence to Law," currently requires compliance with the Act; and (2) CBOE Rule 3.1(b) is intended to set forth permissible membership capacities for the purpose

of satisfying the requirement under Section 2.2 of Article II of the CBOE Constitution and CBOE Rule 3.1(a) that every member have as the principal purpose of its membership the conduct of a public securities business.

The CBOE also proposes to amend CBOE Rule 3.1 to refer separately to the membership capacity of a nominee and the membership capacity of an individual who has registered his or her membership for a member organization.

CBOE Rule 3.2, "Qualifications and Membership Statuses of Individual Members," as amended, clarifies certain requirements for individual members and lists individual membership statuses. Specifically, CBOE Rule 3.2(a) indicates that the current requirement that an individual member must be 21 years of age applies to every individual member and not solely to individual members who own memberships. CBOE Rule 3.2(b) and CBOE Rule 3.2, Interpretation and Policy .01, list all of the individual membership statuses under the Exchange's rules, including those that are approved by the CBOE's Membership Committee ("Membership Committee") and those that are approved by Exchange bodies other than the Membership Committee.⁷ CBOE Rule 3.2(c) states that every individual member who is a lessee, a Chicago Board of Trade ("CBOT") exerciser, or an owner (who is not a lessor) must have an authorized floor function. CBOE Rule 3.2(c) also codifies the definition of an authorized floor function by indicating that an individual is deemed to have an authorized floor function if the member is approved by the Membership Committee to act as a market maker and/or floor broker.

⁷ CBOE Rule 3.2(b) states that the individual membership statuses approved by the Membership Committee include: (i) owner; (ii) lessor; (iii) lessee; (iv) Chicago Board of Trade ("CBOT") exerciser; (v) sole proprietor; (vi) individual with a membership that has been registered for a member organization; (vii) nominee of a member organization; (viii) market maker; (ix) floor broker; (x) member eligible to trade securities pursuant to Chapter XXX of the CBOE's rules; and (xi) trust member. Proposed CBOE Rule 3.2(b) also notes that the individual permit statuses that are approved by the Membership Committee are IPC Permit exerciser and Options Trading Permit holder. Proposed Interpretation and Policy .01 lists the following individual membership statuses that are approved by CBOE bodies other than the Membership Committee: (i) Designated Primary Market Maker ("DPM") designee; (ii) FLEX appointed market maker for FLEX index options; (iii) FLEX qualified market maker for FLEX equity options; (iv) lead market maker in OEX or DJX options; and (v) supplemental market maker in OEX or DJX options. CBOE Rule 3.3, Interpretation and Policy .02 states that member organization membership statuses that are approved by CBOE bodies other than the Membership Committee include Designated Primary Market Makers.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kenneth Rosen, Attorney, Division of Market Regulation ("Division"), Commission, dated July 14, 1999 ("Amendment No. 1"); letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Yvonne Fraticelli, Division, Commission, dated November 3, 1999 ("Amendment No. 2"); and letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Yvonne Fraticelli, Division, Commission, dated April 25, 2000 ("Amendment No. 3"). Amendment No. 1 made numerous technical changes to the proposed rule language and corresponding changes in the Purpose section of the CBOE's filing. Amendment No. 2 made minor technical corrections to the text of the proposed rule and made a conforming change by deleting Section 8(h) from the Exchange's Option Trading Lease Pool Procedures. Amendment No. 3 revised the requirements proposed in CBOE Rule 3.4 for foreign member organizations.

⁴ See Securities Exchange Act Release No. 42111 (November 5, 1999), 64 FR 63065.

⁵ Under proposed CBOE Rules 3.8(a)(iii) and 3.8(b)(iii), nominees of member organizations approved solely to transact business with the public and nominees of lessor member organizations are not required to have an authorized floor function.

⁶ 15 U.S.C. 78k(a).