

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 File No. SR-Amex-2001-21 and should be submitted by May 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44173; File No. SR-CBOE-2001-10]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Adopting Formal Procedures for Members To Submit Proposals To List Option Classes on the Exchange

April 10, 2001.

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 March 13, 2001, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend its rules to adopt formal procedures for members to submit proposals to list option classes on the Exchange, and to codify the Exchange's current procedures for considering whether to list an option class. The text of the proposed rule change is set forth below. Additions are in italics.

* * * * *

Rule 5.3. Criteria for Underlying Securities

(a)-(b) No change.

. . . Interpretations and Policies

.01-.06 Unchanged.

.07 *A member may submit to the Secretary of the Exchange a written request that the Exchange list a particular option class whether or not the option class is traded on any other exchange or market. The request shall specify the reasons why the member believes the Exchange should list the option class. The appropriate Exchange committee shall make every reasonable effort to consider and make a decision regarding the request at its next meeting and in any event shall consider and make a decision regarding the request within 35 days of its receipt. If the appropriate Exchange committee denies the request or approves the request subject to conditions or limitations, the appropriate Exchange committee shall provide the member that submitted the request with a written response setting forth the rationale for its decision within 10 days of making the decision. If, in denying a request or approving a request subject to conditions or limitations, the appropriate Exchange committee relies upon a factor of other bona fide business considerations, the Exchange shall maintain a record of the bona fide business considerations supporting its decision. In the event the Exchange determines to list an option class requested to be listed pursuant to this paragraph, the allocation of the option class shall be governed by Rule 8.95.*

.08 *In deciding whether or not to list an option class, or to place any conditions or limitations on such listing, the Exchange will consider one or more of the following factors: (i) Whether the proposed option class satisfies applicable listing criteria; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations. These criteria shall apply to all option classes considered by the Exchange for listing, whether based on a member request or otherwise.*

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 IV 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

CBOE Rule 5.3 specifies criteria applied by the CBOE in identifying underlying securities on which the Exchange may want to trade options. In addition, from time to time, CBOE members request that the Exchange list specific option classes. Recommendations for listing, whether based on member requests or otherwise, are made by the Exchange's Stock Selection Committee, which is charged with recommending products for listing and trading on the Exchange, to the Exchange's Office of the Chairman and/or Board of Directors. In making recommendations, the Stock Selection Committee currently considers one or more of the following uncodified factors: (i) Whether the proposed option class satisfies applicable listing criteria detailed in CBOE Rule 5.3; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations.

The proposed rule change would adopt formal procedures for members to submit proposals to list option classes on the Exchange, and would codify the factors considered by the Exchange in listing option classes.³ The Exchange believes that formalizing the existing procedures, including them in an interpretation to CBOE Rule 5.3, would provide members with more readily available and visible procedures in

³ As part of a settlement of an enforcement action by the Commission, four of the options exchanges, including the CBOE, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. See Order Instituting Public Administration Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

connection with the submission of listing proposals to the Exchange.

The proposed rule would permit a member to submit to the Secretary of the Exchange a written request that the Exchange list a particular option class, whether or not the option class is traded on any other exchange or market. The written request would be required to specify the reasons why the member believes the Exchange should list the option class. The Stock Selection Committee (or whichever Exchange committee is designated as the "appropriate Exchange committee" by CBOE's Board of Directors) would be required to make every reasonable effort to consider and make a decision regarding the request at its next meeting and, in any event, would be required to consider and make a decision regarding the request within 35 days of its receipt. If the Stock Selection Committee denies the request or approves the request subject to conditions or limitations, it would be required to provide the member that submitted the request with a written response setting forth the rationale for the decision within 10 days of making the decision. If, in denying a request or approving a request subject to conditions or limitations, the appropriate Exchange committee relies upon a factor of other bona fide business considerations, the Exchange would be required to maintain a record of the bona fide business considerations supporting its decision.

The proposed rule also would codify the factors used to determine whether to list an option class, whether based upon a member request or otherwise. These factors would be: (i) Whether the proposed option class satisfies applicable listing criteria; (ii) processing capacity; (iii) cost to the Exchange of listing the option class; (iv) legal or regulatory impediments to listing the option class; (v) the anticipated level of Exchange contract volume and market share in the option class; (vi) member and customer interest in trading the option class; (vii) operational factors; and (viii) other bona fide business considerations.

2. Statutory Basis

The Exchange believes that the proposed rule change ensures that listing proposals by members are submitted and handled pursuant to formalized procedures. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general and furthers the objectives of Section 6(b)(5)⁵ in

particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and 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

The CBOE did not solicit or receive written comments on the proposed rule change.

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 CBOE 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, 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No.

SR-CBOE-2001-10 and should be submitted by May 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44172; File No. SR-DTC-00-17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate DTC's Option To Resell to Deliverers the Securities They Had Previously Delivered by Book-Entry to the Account of a Participant That Has Failed To Settle Its Debit Obligation to DTC

April 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 14, 2000, The Depository Trust Company ("DTC") 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 primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

DTC is proposing to amend its Rule 9(B) to eliminate DTC's option to resell to deliverers the securities they had previously delivered by book-entry to the account of a participant that has failed to settle its debit obligation to DTC.²

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

In its filing with the Commission, DTC 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

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² A copy of the text of DTC's proposed rule change is available at the Commission's Public Reference Room or through DTC.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).