

of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of Index Fund Shares be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the underlying indexes and portfolios are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts, and are therefore consistent with Section 6(b)(5) of the Act. Furthermore, the Commission finds that the Exchange's proposal to trade Index Fund Shares in increments of $\frac{1}{16}$, $\frac{1}{32}$, or $\frac{1}{64}$, of \$1.00, until the Exchange is required to convert to decimal trading, is consistent with the Act.

The Exchange also represents that the Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which products such as Index Fund Shares are based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index, and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

In its proposed generic listing standards, the CSE represents that it will rely upon its existing surveillance procedures for supervision of trading in Index Fund Shares listed or traded pursuant to Rule 19b-4(e). The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares, including those listed or traded under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent

manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.³⁰ The Commission further notes that the Exchange has represented that it will file form 19b-4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b-4(e) recordkeeping requirements.³¹

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the CSE's proposal regarding the listing and trading of Index Fund Shares will be substantially similar to the rules for similar products traded on other exchanges that the Commission has previously approved, and that they raise issues that previously have been the subject of a full comment period under Section 19(b) of the Act.³² The Commission does not believe that the proposal raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,³³ to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-CSE-00-06) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-30719 Filed 12-1-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43604; File No. SR-CSE-00-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts

November 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 13, 2000, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 17, 2000, the CSE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons, and to grant accelerated approval of the proposed rule change and Amendment No. 1.

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

The CSE proposes to amend its listing standards for Trust Issued Receipts ("TIRs") to establish generic standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of TIRs pursuant to Rule 19b-4(e) under the Act.⁴ The text of the proposed rule change is available at the principal office of the CSE and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CSE requested accelerated effectiveness of the proposed rule change and provided reasons therefore. See Letter from James M. Flynn, Staff Attorney, CSE, to Michael Gaw, Attorney-Advisor, Division of Market Regulation, Commission (November 16, 2000). The CSE in fact meant to request accelerated approval of the proposal in Amendment No. 1. Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Advisor, Division of Market Regulation, Commission, on November 21, 2000. Amendment No. 1 also corrected a typographical error in the proposed rule text.

⁴ 17 CFR 240.19b-4(e).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ Telephone conversation between James M. Flynn, Staff Attorney, CSE, and Michael Gaw, Attorney-Advisor, Division of Market Regulation, Commission, on November 1, 2000.

³² 15 U.S.C. 78s(b) See *supra* note 25.

³³ 15 U.S.C. 78f(b)(6).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

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 CSE 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 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

1. Purpose

The Exchange proposes to amend CSE Chapter XI, Rule 11.9(w) (Trust Issued Receipts), to establish generic standards that permit listing and trading, or trading pursuant to UTP, of TIRs pursuant to Rule 19b-4(e) under the Act.

On July 17, 2000, the Commission approved a CSE proposal to adopt certain listing standards for TIRs and to trade two kinds of TIR—Internet HOLDERS and Biotech HOLDERS—pursuant to UTP.⁵ This proposal included new rules stating that the CSE may trade, whether by listing or pursuant to UTP, TIRs based on one or more securities.⁶ In addition, the new rules provided that the Exchange's Constitution and all other rules and policies of the Board of Trustees apply to the trading of TIRs on the Exchange.⁷ For each trust, the CSE will establish a minimum number of TIRs required to be outstanding at the time of commencement of trading on the Exchange.⁸ In addition, following the initial 12-month period after formation of a trust and commencement of trading on the Exchange, the CSE will consider the suspension of trading in, or removal from listing of a trust upon which a series of TIRs is based, under any of the following circumstances: (1) The trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the Trust has more than 50,000 receipts issued and outstanding; (3) the

market value of all receipts issued and outstanding is less than \$1,000,000; or (4) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.⁹

The CSE now intends to trade additional TIR products (e.g., Pharmaceutical HOLDERS and Telecommunications HOLDERS) that currently are listed on other exchanges and that are developed from time to time. To accommodate the efficient listing or trading, or trading pursuant to UTP, of additional TIRs, the CSE proposes to add a new Interpretation to the Exchange's existing rules that would establish generic standards for the listing and trading of TIRs pursuant to Rule 19b-4(e). Under the new Interpretation, the Exchange could list or trade, pursuant to Rule 19b-4(e), any TIRs that meet the following additional criteria: (1) Each security underlying the TIR must be registered under Section 12 of the Act;¹⁰ (2) each company whose securities are underlying securities for the TIR must have a minimum public float of at least \$150 million; (3) each security underlying the TIR must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each company whose securities are underlying securities for the TIR must have an average daily trading volume of at least 100,000 shares during the preceding 60-day trading period; (5) each company whose securities are underlying securities for the TIR must have an average daily dollar value of shares traded of at least \$1 million; and (6) the most heavily weighted security in the TIR cannot initially represent more than 20 percent of the overall value of the TIR.

The CSE believes that these additional criteria will ensure that no security included as an underlying security in a TIR product will be readily susceptible to manipulation, while at the same time permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The CSE also believes that these criteria will ensure sufficient liquidity for those investors seeking to purchase and deposit the underlying securities with the trustee to create a new TIR.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general, and furthers

the objectives of Sections 6(b)(5)¹² in particular, in that it is 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 CSE does not believe that the proposed rule would impose any inappropriate burden on competition. The CSE believes that the proposed rule would encourage competition among markets by allowing more than one exchange to list and trade TIRs pursuant to Rule 19b-4(e) under the Act.¹³

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 in connection with 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 and Amendment No. 1 are 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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CSE-00-05 and should be submitted by December 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1

The Commission finds that the proposed rule change and Amendment No. 1 are consistent with the

⁵ See Exchange Act Release No. 43024 (July 17, 2000), 65 FR 45640 (July 24, 2000).

⁶ See CSE Chapter XI, Rule 11.9(w)(3).

⁷ See CSE Chapter XI, Rule 11.9(w)(1). However, exceptions exist where a trading rule is inconsistent with the TIR listing standards or where the context otherwise requires. See *id.*

⁸ See CSE Chapter XI, Rule 11.9(w)(4)(a).

⁹ See CSE Chapter XI, Rule 11.9(w)(4)(b).

¹⁰ 15 U.S.C. 78l.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 240.19b-4(e).

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).¹⁴ Specifically, the Commission finds that establishing generic standards to permit listing and trading of TIRs pursuant to Rule 19b-4(e) will further the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under Section 19(b) of the Act.¹⁵ By establishing generic standards, the proposal should reduce the CSE's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the CSE's proposal will promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹⁶ Furthermore, the Commission notes that it has previously approved similar proposals by the Chicago Stock Exchange ("CHX") and the American Stock Exchange ("Amex") to establish generic listing standards for TIRs.¹⁷

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.¹⁸ The Commission's approval of the proposed generic listing standards for TIRs and the CSE will allow TIRs that meet those standards to start trading pursuant to Rule 19b-4(e) without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus

enhances investors' opportunities. The Commission notes that, while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any TIRs listed under the generic standards through regular inspections.

The Commission has previously approved a CSE proposal to establish certain listing standards for TIRs and to trade two series of TIRs (Internet HOLDERS and Biotech HOLDERS) pursuant to UTP.¹⁹ In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the CSE's rules and surveillance programs that govern their trading, and determined that the CSE proposal was consistent with Section 6(b)(5) of the Act.²⁰ The Commission also believes that additional TIRs, that satisfy the proposed generic standards and thus can be listed or traded pursuant to Rule 19b-4(e) without prior Commission approval, should produce the same benefits to the CSE and to investors. As the Commission noted in the prior approval, trading of these products will be subject to the full panoply of rules and procedures that govern the trading of securities on the CSE, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.²¹

The Commission further finds that: (1) By requiring that the underlying securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq; and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipt products listed and traded pursuant to Rule 19b-4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Commission further believes that these criteria should help to ensure that the securities underlying such TIRs are

well capitalized and actively traded, which will help ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b-4(e). Accordingly, the Commission finds that these criteria are consistent with Section 6(b)(5) of the Act because they serve to prevent fraudulent or manipulative acts, 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 to protect investors and the public interest.²²

The Commission further notes that, in connection with its previous review and approval of the trading of two series of TIRs on the CSE, it approved the Exchange's surveillance procedures and disclosure and prospectus delivery requirements for TIRs.²³ In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIRs pursuant to Rule 19b-4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

Finally, the Commission notes that the CSE, when trading a new derivative securities product under Rule 19b-4(e), must comply with certain recordkeeping requirements pertaining to each such product and must file Form 19b-4(e)²⁴ with the Commission within five business days after commencement of trading a new TIR under the generic standards.²⁵

In conclusion, the Commission believes that the CSE's proposed rules governing the listing and trading of TIRs pursuant to Rule 19b-4(e) will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.²⁶

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act. The Commission notes that the generic listing standards for TIRs at the CSE will be substantially similar to the listing standards at the Amex and CHX that the Commission has approved in the past.²⁷ The Commission also observes that the proposal concerns issues that previously have been the

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b).

¹⁶ 15 U.S.C. 78f(b)(5). In approving these rules, the Commission notes that it has considered the proposed rules' impact on efficiency, completion, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ See Exchange Act Release No. 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000).

¹⁸ See Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (adopting release for Rule 19b-4(e)).

¹⁹ See Exchange Act Release No. 43042 (July 17, 2000), 65 FR 45640 (July 24, 2000).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See 65 FR at 45643.

²² 15 U.S.C. 78f(b)(5).

²³ See 65 FR 45643-44.

²⁴ 17 CFR 249.820.

²⁵ See 17 CFR 19b-4(e)(2).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See *supra* note 17.

subject of a full comment period pursuant to Section 19(b) of the Act.²⁸ The Commission does not believe that the proposal raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁹ to approve the proposed rule change and Amendment No. 1 on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-CSE-00-05) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-30770 Filed 12-1-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43624; File No. SR-DTC-00-13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to the Processing of Low Volume Tender Offers

November 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 29, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The purpose of the proposed rule change is to clarify the policy of DTC regarding low volume tender offers. A low volume tender offer is an offer in which the offeror is seeking to purchase for cash up to 5% of the outstanding

shares of an equity issue or any amount of a debt issue. Low volume tender offers do not include an exchange offer or an offer by the issuer of the target security. The proposed rule change clarifies that it is DTC's policy (i) not to make an offeror's information about a low volume tender offer available to participants through DTC's Reorganization Inquiry for Participants System ("RIPS") unless the offeror uses DTC's Automated Tender Offer Program ("ATOP") to process the offer and (ii) not to make securities available to the offeror at the conclusion of a low volume tender offer processed through ATOP until DTC has received payment for the securities from the offeror.

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 in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

As DTC has gained experience in processing low volume tender offers during recent years, DTC has sought to improve the manner in which it handles such offers. In a small number of cases, the offeror making a low volume tender offer sent DTC information to be entered into RIPS and paid DTC's low volume tender offer fee³ but did not use ATOP to process acceptances of the offer. In such cases the offeror included in the offering documents an instruction that participants who wished to accept the offer should do so by a free book-entry delivery at DTC to the account of a participant represented to be acting on behalf of the offeror. Participants accepting such an offer did not have all the benefits of ATOP. Those benefits include more detailed information in the RIPS announcement, such as

information about the existence of any withdrawal rights in the offer and information about the offeror's payment arrangements, and an indication on their daily participant statements while the offer is open that a tendered position is outstanding. In order to assure that its participants receive the benefits of ATOP, as a matter of policy DTC does not announce a low volume tender offer in RIPS unless the offer is processed through ATOP.

When a low volume tender offer is not processed through ATOP, payment for any securities purchased in the offer usually, if not always, are made to participants outside of DTC's facilities. It can be difficult for participants to assure themselves that securities delivered to the offeror by a free book-entry delivery at DTC are promptly paid for at the end of the offer. To give its participants the efficiency and safeguards of payment through DTC's facilities, DTC requires the offeror in a low volume tender offer processed through ATOP to send payment to DTC for any securities purchased in the offer before DTC makes the securities available to the offeror.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will facilitate the processing of low volume tender offers at DTC. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since low volume tender offers will be processed with the safeguards of the ATOP procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

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

Written comments from DTC participants or others have not been solicited or received on the proposed rule change. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of

²⁸ 15 U.S.C. 78s(b). See *supra* note 17.

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

³ DTC charges a fee of \$2,700 in connection with low volume tender offers processed through its facilities. Securities Exchange Act Release No. 41032, (February 9, 1999) 64 FR 7931 (February 17, 1999) [File No. SR-DTC-99-01]. DTC will continue to charge that fee, which is not affected by the proposed rule change.