

7 under the Act, will be considered illiquid and subject to the restriction that no open-end Fund may invest more than 15%, or in the case of a money market Fund, more than 10%, (or such other percentage as set forth by the Commission from time to time) of its net assets in illiquid securities, if the Adviser cannot sell the instrument, or the funds' fractional interest in such instrument, pursuant to the preceding condition.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42159; File No. SR-Amex-99-46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to the Listing and Trading of Biotech HOLDERS

November 19, 1999.

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 October 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange 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 proposal was amended on November 1, 1999.³ 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 to the proposed rule change, as amended.

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

The Exchange proposes to trade Biotechnology HOLDERS ("Biotech HOLDERS"), a trust issued receipt. 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 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 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 Amex proposes to list for trading, pursuant to Rules 1200 *et seq.*, trust issued receipts that are intended to provide investors with a flexible, cost-effective way of purchasing, holding and transferring the securities of one or more specified companies. Trust issued receipts are unleveraged instruments, and therefore do not possess many of the attributes of stock index options.

Except for the composition of basket of securities deposited in the trust, the proposed Biotech HOLDERS are structurally identical to the Internet HOLDERS trust issued receipts previously approved for listing and trading on the Exchange.⁴ The newly proposed trust issued receipts will evidence beneficial ownership of the specific deposited securities represented by the receipts. The Exchange believes that the level risk and sale of trust/issue receipts is almost identical to the risk involved in the purchase or sale of the common stocks represented by the receipt. Under this proposal the Exchange anticipates listing trust issued receipts on one or more groups of securities. The Exchange notes that it will be required to submit a proposal, pursuant to Section 19(b) of the Exchange Act, before it lists a trust issued receipt on a new group of securities.

(a) Description of Trust Issued Receipts

The Exchange expects that this issuance of trust issued receipts will represent 20 companies involved in various segments of the biotechnology industry. The proposed companies and their specific share amounts for each round-lot of 100 trust issued receipts are set forth in the chart below and were determined as of October 25, 1999, so that the initial weightings of each underlying security included in the trust approximated the relative market capitalizations of the specified companies, subject to a maximum weight of 20%, as of that date. Because these weightings are a function of market prices, they are expected to change substantially over time, including during the period between the date of this proposed rule change and the date the trust issued receipts are issued to the public.

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
Amgen Inc	AMGN	20	19.58	Nasdaq.
Genetech, Inc	DNA	11	18.62	NYSE.
Biogen, Inc	BGEN	13	11.61	Nasdaq
Immunex Corporation	IMNX	13	9.87	Nasdaq.
PE Corp-PE Biosystems Group	PEB	8	6.33	NYSE.
Chiron Corporation	CHIR	18	5.77	Nasdaq.
MedImmune, Inc	MEDI	4	5.10	Nasdaq.
Genzyme Corporation	GENZ	9	4.20	Nasdaq.
BioChem Pharma Inc	BCHE	9	2.55	Nasdaq.
Millennium Pharmaceuticals, Inc	MLNM	3	2.81	Nasdaq.
Affymetric, Inc	AFFX	2	2.36	Nasdaq.
QLT Photo Therapeutics Inc	QLTI	2	2.01	Nasdaq.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Exchange to Nancy Sanow,

Senior Special Counsel, Division of Market Regulation, Commission dated November 1, 1999 ("Amendment No. 1").

⁴ Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999).

Name of company	Symbol	Share amounts	Initial weighting (percent)	Primary trading market
Gilead Sciences, Inc	GILD	3	2.34	Nasdaq.
Sepracor Inc	SEPR	2	1.73	Nasdaq.
IDEC Pharmaceuticals Corporation	IDPH	2	2.41	Nasdaq.
Human Genome Sciences, Inc	HGSI	2	1.97	Nasdaq.
ICOS Corporation	ICOS	3	1.05	Nasdaq.
Enzon, Inc	ENZN	3	1.00	Nasdaq.
Celera Genomics	CRA	2	0.80	Nasdaq.
ImClone Systems Incorporated	IMCL	3	0.89	Nasdaq.

The companies represented in the Biotech HOLDERS meet the following minimum criteria, which are set forth in Amex Rule 1200: (1) The companies' common stocks are registered under Section 12 of the Act; (2) the minimum public float of each company included in the portfolio is at least \$150,000,000; (3) each stock is either listed on a national securities exchange or traded through the facilities of Nasdaq and is a reported national market system security; (4) the average daily trading volume for each stock was at least one hundred thousand shares during the preceding 60-day trading period; (5) the average daily dollar value of the shares traded during the preceding 60-day trading period was at least \$1 million; and (6) the initial weighting of each stock in the receipt was based on market capitalization, however, if on the date such weighting is determined, a stock represented more than 20% of the overall value of the receipt, then the amount of such stock was reduced to no more than 20% of the receipt value. Once initially set, the securities represented by a receipt will not change, except in accordance with the reconstitution events described below.

Trust Issued Receipts

Trust issued receipts are negotiable receipts which are 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 are designed to allow investors to hold certain securities investments in a single, exchange-listed and traded instrument representing their beneficial ownership in the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts will have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued

receipt program. Holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts, will receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders, and will receive dividends and other distributions declared and paid by the issuers of the deposited securities to the trustee.

The trust will issue trust issued receipts under the depositary trust agreement, among The Bank of New York, as trustee, Merrill Lynch Pierce Fenner & Smith Incorporated, other depositors and the owners of the trust issued receipts. After the initial offering, a trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust.

A round-lot of 100 trust issued receipts represents a holder's individual and undivided beneficial ownership interest in the whole number of securities represented by the receipt. Trust issued receipts may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. The amounts of deposited securities for each round-lot of 100 trust issued receipts will be determined at the beginning of the marketing period and will be disclosed in the prospectus to investors. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts and to deposit such securities to receive trust issued receipts. Orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot multiple will be executed to the extent of the largest round lot multiple, rejecting the remaining odd-lot (e.g., orders for 50 trust issued receipts will be rejected, and for orders of 1050 trust issued receipts, 1000 will be executed and 50 will be rejected). The initial offering price for a trust issued receipt will be established on the date the receipts are priced for sale to the public.

Based upon the potential for arbitrage opportunities, the Exchange believes that trust issued receipts will not trade at a material discount or premium to the assets held by the issuing trust. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities (e.g., the trust issued receipts and the portfolio of deposited securities), increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of the trust issued receipts deviate enough from the portfolio of deposited securities to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy the trust issued receipts at a discount, immediately cancel them in exchange for the deposited securities and sell the shares in the cash market at a profit, or sell the trust issued receipts short at a premium and buy the securities represented by the receipts to deposit in exchange for the trust issued receipts to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.

Trust issued receipts will be deemed "Eligible Securities," as defined in Amex Rule 230, for purposes of the Intermarket Trading System ("ITS") Plan and therefore will be subject to the trade through provisions of Amex Rule 236, which require that Amex members avoid initiating trade-throughs for ITS securities. Further, specialist transactions with the trust issued receipts' trade made in connection with the creation and redemption of trust issued receipts will not be subject to the prohibitions of Rule 190.⁵

Minimum Fractional Change

Trust issued receipts will trade in minimum fractional increments pursuant to Amex Rule 127. Application of Rule 127 will result in a minimum fractional change of $\frac{1}{16}$ th of \$1.00 for

⁵ Amex Rule 190 prohibits, among other things, any business transaction between a specialist and the company in which stock the specialist is registered.

those trust issued receipts selling at or above \$0.25 and $\frac{1}{32}$ nd of \$1.00 for those selling below \$0.25.

Maintenance of Trust Issued Receipts

Except when a reconstitution event occurs, as described below, the securities represented in a trust issued receipt will not change.⁶ Additionally, the number of each security represented in a receipt will not change except for changes due to certain corporate events such as stock splits or reverse stock splits on the deposited securities or when a reconstitution event occurs. Under no circumstances will a new security be added to the list of securities after a particular receipt program is established.

The relative weightings among the deposited securities will change based on the current market price of the deposited securities and upon the reconstitution events discussed below. Once established, the component securities held by the trust and represented by trust issued receipts will not change unless an event described below occurs.

Reconstitution Events

The trust agreement provides for the automatic distribution of specified deposited securities to the beneficial owner of such receipts in the circumstances referred to in the prospectus as "reconstitution events": (1) If a company with deposited securities evidenced by a trust issued receipt no longer has a class of common stock registered under Section 12 of the Securities Exchange Act of 1934, then its securities will no longer be a deposited security and the trustee will distribute the securities of that company to the owners of the trust receipts; (2) if the Commission finds that a company with deposited securities evidenced by the trust issued receipts is a company that should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the Commission's finding, then the trustee will distribute the securities of that company to the owners of the trust issued receipts; (3) if the deposited securities of a company evidenced by a trust issued receipt are no longer outstanding because the securities were acquired by another company, the trustee will distribute the consideration paid by and received from the acquiring company to the beneficial owners of trust issued receipts, unless the

consideration is additional deposited securities (*i.e.*, the acquiring company's securities are already included in the trust issued receipt as deposited securities), in which case such additional securities will be deposited into the trust; and (4) if an underlying issuer's deposited securities are delisted from trading on their primary exchange or market and not listed for trading on another national securities exchange or through Nasdaq within five business days from the date the deposited securities are delisted.⁷ If the trustee removes a deposited security from the trust due to the occurrence of one of the reconstitution events described above, the trustee, in accordance with the depositary trust agreement, will deliver the deposited security to the investor as promptly as practicable after the date that the trustee has knowledge of the occurrence of a reconstitution event.

The trust will issue and cancel, and an investor may obtain, hold, trade or surrender, receipts only in a round-lot of 100 trust issued receipts or round-lot multiples. While investors will be able to acquire, hold, transfer and surrender a round-lot of 100 trust issued receipts, the bid and asked prices will be quoted on a per receipt basis.⁸ The trust will issue additional receipts on a continuous basis when an investor deposits the required securities with the trust.

A holder may obtain trust issued receipts by either purchasing them on the Exchange or delivering to the trust during its normal business hours the requisite securities evidencing a trust issued receipt. The trustee will charge an issuance fee of up to \$10.00 per 100 trust issued receipts. If a holder wants to cancel trust issued receipts and withdraw the deposited securities, the holder may do so by surrendering the receipts to the trust during normal business hours. The trustee will charge a cancellation fee of up to \$10.00 per 100 trust issued receipts. The holder should receive the deposited securities no later than the business day after the trustee receives the request.

⁷ This provision is designed for the purpose of permitting a deposited security to move its listing between, for example, the Amex and Nasdaq without requiring the automatic distribution of the deposited security to beneficial owners of the receipts. Should deposited securities be delisted to a market other than a national securities exchange or Nasdaq (*e.g.*, the OTC Bulletin Board), such securities will be automatically distributed to the beneficial owners of the receipts.

⁸ The receipt amount will be disseminated by the Amex every 15 seconds over the Consolidated Tape Association's Network B.

Termination of the Trust

The trust shall terminate upon the earlier of: (i) The removal of the receipts from Amex listing if they are not listed for trading on another national securities exchange or through the facilities of Nasdaq within five business days from the date the receipts are delisted; (ii) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the initial depositor of its intent to resign; (iii) 75 percent of beneficial owners of outstanding trust issued receipts vote to dissolve and liquidate the trust; or (iv) December 31, 2039. If a termination event occurs, the trustee will distribute the underlying securities to the investor as promptly as practicable after the termination event.

(b) Criteria for Initial and Continued Listing

Because of the continuous issuance and cancellation of trust issued receipts, the Exchange believes that it is necessary to maintain appropriate flexibility in connection with listing a specific trust. In connection with initial listing, the Exchange proposes that, for each trust, the Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b-4 under the Act for each trust. It is anticipated that a minimum of 150,000 receipts will be required to be outstanding when trading begins.

Because of the continuous issuance and cancellation of trust issued receipts, and because the number of holders is subject to substantial fluctuations depending on market conditions, the Exchange believes that it would be inappropriate and burdensome on trust issued receipt holders to consider suspending trading in or delisting a series of receipts with the consequent termination of the trust, unless the number of holders remains severely depressed over an extended time period. Therefore, the Exchange will consider suspending or delisting a trust from trading when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(i) 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 trust issued receipts for 30 or more consecutive trading days;

⁶ The Amex will consult with the Commission to confirm the appropriateness of the continued listing of trust issued receipts should the portfolio of securities held by the trust become fewer than nine.

(ii) if the aggregate number of trust issued receipts outstanding is less than 50,000;

(iii) if the aggregate market value of trust issued receipts publicly held is less than \$1,000,000; or

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

However, the Exchange will not be required to suspend or delist from trading, based on the above factors, any trust issued receipts for a period of one year after the initial listing of such trust issued receipts for trading on the Exchange.

(c) Exchange Rules Applicable to the Trading of Trust Issued Receipts

Trust issued receipts will be deemed equity securities subject to all Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability (Amex Rule 411), and the election, with the prior approval of a floor official, of a stop or limit order by a quotation (Amex Rule 154, Commentary .04(c)). Initial Exchange equity margin requirements of 50 percent and the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in trust issued receipts. However, trading rules pertaining to the availability of odd-lot trading in Amex equities will not apply to the trading of trust issued receipts, because they can only be traded in round-lots. The Amex applied for exemption from the short sale rule, Rule 10a-1 under the Act,⁹ for Internet HOLDRs, which was granted on November 3, 1999.¹⁰ This exemption applies to Biotech HOLDRs as well. The Exchange will issue a notice to its members detailing the terms of the exemption. Amex's surveillance procedures for trust issued receipts will be similar to those used for portfolio depository receipts and will incorporate and rely upon existing Amex surveillance procedures governing options and equities.

With respect to investor disclosure, the Exchange notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all

Amex members purchasing trust issued receipts from the trust for resale to customers will deliver a prospectus to such customers.

Prior to the commencement of trading in trust issued receipts, the Exchange will issue a circular to members informing them of, among other things, Exchange policies regarding trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Rule 117 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Exchange may consider factors such as the extent to which trading is not occurring in a deposited share(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5)¹¹ of the Act 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 Exchange does not believe that the proposed rule 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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-Amex-99-46 and should be submitted by December 21, 1999.

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

A. Generally

The Commission finds that the proposed rule change, as amended, 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 Specifically, the Commission finds, as it did in the Amex order approving the listing and trading of trust issued receipts generally, and Internet HOLDRs specifically, that the proposal to list and trade Biotech HOLDRs will provide investors with a convenient and less expensive way of participating in the securities markets. The Exchange's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹³

The Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the

⁹ 17 CFR 240.10a-1.

¹⁰ See Letter to Claire P. McGrath, Vice President and Special Counsel Derivative Securities, from James A. Brigagliano, Assistant Director, Division of Market Regulation, SEC, dated November 3, 1999.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(5).

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

industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess many of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.¹⁴ Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues that must be addressed.

B. Listing and Trading of Trust Issued Receipts

The Commission finds that the Amex's proposal, as amended, to trade Biotech HOLDRs meets all of the specific criteria and listing standards that were approved in the Amex order approving the listing and trading of Internet HOLDRs.¹⁵ Biotech HOLDRs are equity securities that will be subject to the full panoply of Amex rules governing the trading of equity securities on the Amex, including, among others, rules governing the priority, parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.¹⁶

Moreover, in approving this proposal, the Commission notes the Exchange's representation that Biotech HOLDRs will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange

represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade Biotech HOLDRs in minimum fractional increments of $\frac{1}{16}$ th of \$1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the Amex has developed surveillance procedures for trust issued receipts that incorporate and rely upon existing Amex surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of Biotech HOLDRs, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

C. Disclosure and Dissemination of Information

The Commission believes that the Exchange's proposal, as amended, will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of Biotech HOLDRs, including a statement regarding their redeemability and method of creation. The Commission notes that all investors in Biotech HOLDRs who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing Biotech HOLDRs directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Amex member firms who purchase Biotech HOLDRs from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular will note the Exchange members' prospectus delivery requirements, and highlight the

characteristics of Biotech HOLDRs. The circular will inform members of Exchange policies regarding trading halts in Biotech HOLDRs.

D. Accelerated Approval

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade Biotech HOLDRs, will provide investors with a convenient and less expensive way of participating in the securities markets. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Biotech HOLDRs, as an investment tool, the Amex's proposal should help provide investors with increased flexibility in satisfying their investment needs. This is achieved by allowing investors to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes however, that, notwithstanding approval of the listing of Biotech HOLDRs, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being listed and traded on the Exchange. Moreover, additional series cannot be listed prior to the Exchange contacting Division staff. Finally, the Amex may be required to submit a rule filing prior to listing and trading a new issue or series of trust issued receipts on the Exchange.

The Commission believes that the trading of this product raises no new regulatory issues and, except for the composition of securities deposited in trust, the Biotech HOLDRs are structurally the same as the Internet HOLDRs trust receipts previously approved by the Commission for listing and trading on the Amex. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-99-46), as amended, is hereby approved on an accelerated basis.

¹⁴ The Commission has concerns about continued listing of the trust issued receipts if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross section of the selected industry. Accordingly, the Amex has agreed to consult the Commission, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter.

¹⁵ See *supra*, note 3.

¹⁶ Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

¹⁷ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-30977 Filed 11-29-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42168; File No. SR-CBOE-99-61]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Non-Automatic Handling of RAES Orders

November 22, 1999.

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 November 8, 1999, 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 and II below, which Items have been prepared by the Exchange. On November 22, 1999, CBOE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis for a ninety day pilot to expire on February 21, 2000.

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

CBOE proposes to amend its rule governing the operation of its Retail Automatic Execution System ("RAES") to allow, under certain circumstances, orders to be rejected from RAES and routed to the Public Automated Routing terminal ("PAR") for manual handling. 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 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 proposal is to allow, under certain circumstances, orders to be rejected from RAES for manual handling where the bid or offer for a series of options generated by the Exchange's Autoquote system becomes crossed or locked with the best offer or bid for that series as established by a booked order. The proposed rule is intended to correct an unintended consequence of the planned implementation of the Automated Book Priority ("ABP") system that could have significant detrimental effects on the operation of the RAES as described further below. The CBOE anticipates that the number of orders that will be rejected from RAES under this proposed rule should represent only a small subset of the orders that have been and currently are rejected pending implementation of the ABP system.

The Exchange's ABP system will allow an order entered into RAES to trade directly with an order on the Exchange's customer limit order book where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book.⁴ The Commission recently approved the Exchange's rules implementing the ABP system,⁵ which has not yet been implemented.⁶

⁴ In the event the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the rest of the order was executed.

⁵ See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR-CBOE-99-29).

⁶ Currently, with certain exceptions discussed below, when a RAES order is entered into the Exchange's Order Routing System when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book, the order will be routed electronically to a Floor Broker's terminal or work station in the crowd subject to the volume parameters of each firm. Today, the orders are routed to the Floor Brokers instead of being

The Exchange recently became aware of an unintended consequence of the operation of the ABP system. That is, in situations where the best bid or offer for one or more series of a particular option class is established by one or more orders in the book, the market-makers logged on to RAES for that class of options could be subject to a substantial risk in the event that the market in the underlying stock moves significantly and quickly in a direction that makes the booked order price substantially better than the price calculated by CBOE's Autoquote formula. In that event, while the booked order would quickly be executed, CBOE represents that the ABP system may not be able to react quickly enough to remove the executed order from the limit order book. As a result, once ABP is implemented, orders entered in RAES would automatically be executed against the stale bid or offer still being shown in the book notwithstanding the booked order having already been executed. CBOE contends that this result could cause direct and substantial economic disadvantage to the market-makers who are obligated to participate in RAES executions. The Exchange believes that implementing ABP without addressing this potential risk could cause market-makers to avoid participating on RAES (thus, affecting the liquidity of lower volume series traded on RAES and endangering the viability of RAES), or to widen their quotes to minimize the possible adverse consequences of executing orders based on stale quotes and to account for the potential losses (thus, affecting the ability of CBOE's market-makers to compete with competing specialists or market-makers). In the alternative, market-makers might request that the Equity Floor Procedure Committee reduce the size of orders eligible for RAES to minimize the impact of these orders (thus, eliminating a significant advance in automatic execution that CBOE represents its customers have requested).

automatically executed in the crowd at the market price, because execution with the crowd would be inconsistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. CBOE permits RAES orders in options on IBM, options on the Dow Jones Industrial Average (DJX) and options on the Standard & Poor's 100 Stock Index (OEX) to be executed on RAES even if the prevailing market bid or offer equals the best bid or offer on the Exchange's book. In other words, RAES orders in these options classes are currently allowed to "trade through" the book. Upon implementation of the ABP system, RAES orders in these option classes, like all other option classes, will trade against orders in the book in these circumstances.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, CBOE shortened the length of the pilot program from one year to ninety days. See letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 19, 1999.