

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42832; File No. SR-ODD-00-02]

Self-Regulatory Organizations; OM London Exchange Limited; Order Approving Proposed Amendment to Options Disclosure Document

May 25, 2000.

On May 25, 2000, the OM London Exchange Limited ("OM London") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act")¹ five definitive copies of OM London's options disclosure document ("ODD"), which OM London has revised to reflect the introduction of OMXcap Index options.²

OM London's ODD currently contains general disclosures concerning the characteristics and risks of trading equity and index options on OM London. Prior to May 26, 2000, OM London listed options on Swedish equity securities and on the OMX Index. On May 26, 2000, OM London will also list options on the OMXcap Index, a modified capital-weighted index designed to reflect the development of the Swedish stock market. OM London has revised its ODD to accommodate the introduction of OMXcap Index options. OM London's revised ODD also includes disclosures concerning certain restrictions on the trading of OMX Index options after May 26, 2000.

The Commission has reviewed OM London's revised ODD and finds that it complies with Rule 9b-1 under the Act. OM London's revised ODD provides information regarding OMXcap Index options sufficient to describe the special characteristics of OMXcap Index options.

Rule 9b-1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.³ The Commission has reviewed OM London's

revised ODD and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of OM London's revised ODD as of the date of this order.⁴

It is Therefore Ordered, pursuant to Rule 9b-1 under the Act,⁵ that OM London's ODD as amended to reflect the listing of OMXcap index options (File NO. SR-ODD-00-02) is approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-13960 Filed 6-2-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42833; File No. SR-CBOE-00-11]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index Portfolio Shares

May 26, 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 March 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to adopt listing standards to list and trade Index

Portfolio Shares ("IPS"), securities issued by an open-end management investment company that seek to provide investment results similar to the price and yield performance of its underlying index. Once these listing standards have been approved, the Exchange intends to trade IPSs of a Fund based on the S&P 100 Index. Below is the text of the proposed rule change. New language is *italicized* and deletions are bracketed.

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Chicago Board Options Exchange,
Incorporated Rules

Rule 1.1

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. . . Interpretations and Policies:

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.03 the term "*Index Portfolio Shares*" or *IPSs* means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash with a value equal to the next determined net asset value.

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Rule 30.10 The unit of trading in stocks, [and] the unit of trading in IPRs and the unit of trading in IPSs shall be 100 shares or units, except as otherwise established [in either case] by the Exchange. The unit of trading in all other securities traded subject to the rules in this Chapter shall be as determined by the Board of Directors.

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Rule 30.33

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. . . Interpretations and Policies:

.01 The minimum fractional change for IPRs and IPSs shall be 1/64 of \$1.00.

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Rule 30.36 Rule 24.7 shall apply to the trading of stock index warrants, IPSs and IPRs. The term "option" as used therein shall be deemed for the purposes of this Rule to include a stock index warrant, IPSs or IPRs, as the case may be.

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¹ 17 CFR 240.9b-1.

² The Commission previously reviewed OM London's ODD and found that it complied with Rule 9b-1 under the Act. See Securities Exchange Act Release No. 39080 (September 15, 1997), 62 FR 49553 (September 22, 1997) (order approving File No. SR-ODD-97-1).

³ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

⁴ Rule 9b-1 provides that the use of an ODD shall not be permitted unless the option class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On September 12, 1997, the Commission, pursuant to delegated authority, declared effective OM London's revised Form S-20 registration statement. See File No. 333-34519.

⁵ 17 CFR 240.9b-1.

⁶ 17 CFR 200.30-3(a)(39)(i).

⁶ 17 CFR 200.30-3(a)(39)(i)

¹⁵ U.S.C. 78s(b)(1).

Rule 30.55

(b) The disclaimers found under Rule 24.14 shall apply to any Reporting Authority with respect to any index or portfolio underlying a series of IPRs, IPSs, index warrants or any other index-related security governed by the rules of Chapter XXX. The terms "option" and "option contract" as used in Rule 24.14 shall be deemed for the purpose of this rule to include IPRs, IPSs, index warrants or other index-related security governed by the rules of Chapter XXX, as the case may be.

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Special Provisions for IPSs

Rule 30.56

Designation of an index or portfolio. The Exchange may list and trade Index Portfolio Shares (as defined in Interpretations and Policies .03 following rule 1.1) based on one or more foreign or domestic stock indexes or securities portfolios. Each issue of Index Portfolio Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which a series of Index Portfolio Shares is based shall be selected by the Exchange or its agent or by such other person as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

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Rule 31.5

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M. IPSs. Notwithstanding any other provisions in these Rules to the contrary, a series of IPSs representing interests in a particular open-end management investment company (as those terms are defined in Interpretations and Policies .03 following Rule 1.1) may be listed on the Exchange subject to the criteria set forth below:

(a) Public Distribution—For each open-end management investment company, the Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange.

(b) Voting—Voting rights shall be as set forth in the applicable open-end management investment company prospectus.]

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Rule 31.94

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H. Policies Regarding IPSs.

Twelve months following the commencement of trading on the Exchange of a series of Index Portfolio Shares, the Exchange will consider the suspension of trading in, or removal from listing of, such series of IPSs, when in its opinion further dealing in such securities appears unwarranted under any of the following circumstances:

(a) there are fewer than 50 beneficial holders of the series of Index Portfolio Shares for 30 or more consecutive trading days; or

(b) the value of the index or portfolio of securities on which the series of Index Portfolio Shares is based is no longer calculated or available; or

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

Upon termination of an open-end management investment company, the Exchange requires that Index Portfolio Shares issued in connection with such entity be removed from Exchange listing.

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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 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 adopt new Interpretation .03 to CBOE Rule 1.1, new CBOE Rule 30.56, new paragraph M to CBOE Rule 31.5, and new paragraph H to CBOE Rule 31.94; and to amend CBOE Rule 30.10, Interpretation .01 to CBOE Rule 30.33, CBOE Rule 30.36, and CBOE Rule 30.55, to permit the listing and trading of IPSs, *i.e.*, securities issued by an open-end management investment company that seeks to provide investment results similar to the price and yield performance of its underlying index. The Exchange believes that IPSs would provide investors with increased flexibility in meeting their investment needs.

a. *Index Portfolio Shares.* IPSs will be issued by an entity registered with the Commission under the Investment Company Act of 1940, as amended, as an open-end management investment company, commonly known as a mutual fund ("Fund"). A Fund may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. The Exchange represents that IPSs are essentially the same as Index Fund Shares, securities that have traded on the American Stock Exchange LLC ("Amex") since the Commission approved Amex Rules 1000A *et seq.* in March 1996.³ The CBOE also states that IPSs are similar to CBOE's Index Portfolio Receipts ("IPRs"), which are securities issued by a unit investment trust rather than a Fund. The Commission approved standards for the listing and trading of IPRs in 1998.⁴

The CBOE intends to list and trade IPSs of a Fund (to be managed by Barclays Global Fund Advisors) that will seek to provide investment results that correspond generally to the price and yield performance of the S&P 100 Index.⁵ The CBOE states that this index represents the large capitalization growth sector of the U.S. market and accounts for approximately 38% of the market capitalization of all U.S. equity securities. The CBOE represents that the index consists of 100 stocks that are some of the largest companies in the U.S. equity market and that size, liquidity, and sector representations are the primary determinants in choosing index constituents.

b. *Issuance and Redemption.* Issuances of IPSs by a Fund will be made only in minimum size aggregations or multiples thereof ("Creation Units"). The size of the applicable Creation Unit will be set forth in the Fund's prospectus, and will vary from one series of IPSs to another, but generally will be substantial (*e.g.*, at least 50,000 shares).⁶ It is expected that

³ See Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

⁴ See Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

⁵ At the time, the CBOE has no plans to list series of IPSs for indices other than that described in the present rule filing. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), Commission; Susie Cho, Attorney, Division, Commission, on April 25, 2000.

⁶ The Commission notes that if in the future the number of shares per Creation Unit of an S&P 100 series were to be changed, or the value of a Creation Unit were to fall significantly, such a change could require the filing of a proposed rule change by the

a Fund will issue and sell IPSs through a principal underwriter on a continuous basis at the net asset value ("NAV") per share next determined after an order to purchase IPSs in Creation Unit size aggregations is received in proper form.

The Exchange expects that Creation Unit size aggregations of IPSs generally will be issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a specified amount of cash. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitrageurs, and market maker members of the Exchange. Similarly, redemption of IPSs generally will be made "in kind," with a portfolio of securities and/or cash exchanged for IPSs that have been tendered for redemption.

c. *Trading of IPSs.* Following issuance, IPSs will be traded on the Exchange like other equity securities, and CBOE equity trading rules generally would apply to the trading of IPSs. IPSs will be registered in book entry form through The Depository Trust Company ("DTC"), which means no stock certificates will be issued. The Exchange represents that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions and other factors. Trading in IPSs on the Exchange may be effected until 3:15 p.m. (central time) each business day. The unit of trading of IPSs will be 100 shares or units and the minimum fractional change in IPSs will be $\frac{1}{64}$ of \$1.00.

d. *Distributions.* A Fund may make periodic distributions of dividends from net investment income, if any. A Fund also distribute its capital gains, if any, to investors annually.

e. *Criteria for Initial and Continued Listing.* The Exchange believes that the proposed standards for listing and delisting of IPSs allow some flexibility for the Exchange. The Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange. The Exchange anticipates that a minimum of two Creation Units in any series of IPSs would be required to be outstanding before trading could begin. Each series of IPSs will be subject to the initial and continued listing criteria of new proposed CBOE Rules 31.5M and 31.94H.

CBOE Rule 31.94H provides that twelve months after the commencement of Exchange trading of a series of IPSs, the Exchange will consider suspension of trading in, or removal from listing of, such series under any of the following circumstances:

(a) There are fewer than 50 beneficial holders of the series of IPSs for 30 or more consecutive trading days;

(b) The value of the index or portfolio of securities on which the series of IPSs is based is no longer calculated or available; or

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

The Exchange will also require that IPSs be removed from listing upon termination of the Fund that issued such shares.

f. *Disclosure.* With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended, all investors in IPSs will receive a prospectus, including investors purchasing in secondary market transactions on the Exchange. This is due to the fact that the Creation Units will be in continuous distribution.

Prior to commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific series and to applicable Exchange rules. That circular will inform members of their responsibilities with respect to transactions in such IPSs. The circular will inform member organizations of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable; they may be redeemed in Creation Units only.

g. *Trading Halts.* Prior to commencement of trading in IPSs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in IPSs. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, trading in IPSs would be halted (along

with the trading of other securities on the Exchange) if the circuit breaker parameters under CBOE Rule 6.3B are reached.

h. *Surveillance.* The Exchange will use the surveillance procedures that it has been using for the trading of other non-option securities traded on the Exchange.⁷ These procedures incorporate and rely upon existing CBOE surveillance procedures governing equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁸ in general, and in particular, with section 6(b)(5),⁹ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of 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 Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition. The CBOE believes that the proposed rule change will enhance competition for the listing and trading of IPSs and similar securities that are currently listed and traded on the Amex.

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

The Exchange did not receive any written comments on 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, 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

⁷ See Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998) (noting that CBOE surveillance procedures for the trading of IPRs, which incorporate and rely upon existing CBOE surveillance procedures governing equities, were adequate under the Act).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Exchange pursuant to Section 19(b) of the Act. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission, on April 25, 2000.

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-CBOE-00-11 and should be submitted by June 26, 2000.

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

After careful review, the Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.¹¹ Specifically, the Commission finds that the proposed standards governing the listing and trading of IPSs, and, in particular, the IPSs Fund on the S&P 100 Index, will provide investors with a convenient and less expensive way of participating in the securities markets. The 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 or to a large extent representing the performance of several portfolios of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange'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.¹²

On January 26, 1998, the Commission approved the listing and trading on the CBOE of IPRs, securities issued by a unit investment trust that seek to provide investment results that correspond generally to the price and yield performance of a specified index.¹³ The proposed IPSs are similar to IPRs except that IPSs are issued by a Fund instead of a unit investment trust.

The Commission believes that the proposal to list and trade IPSs, and specifically the Fund based on the S&P 100 Index, 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 a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. IPSs will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and, (3) reduce transactions costs for trading a portfolio of securities.

Although IPSs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these IPSs is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these IPSs is based on a portfolio of securities.

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of IPSs. Under CBOE rules, IPSs are subject to the full panoply of rules governing the trading of equity securities on the CBOE, including, among others, rules and procedures governing the priority, parity and precedence of orders, responsibilities of all types of market-makers, trading halts, disclosures to members, margin requirements, and customer suitability requirements. Further, the Commission notes that the CBOE will use surveillance procedures that incorporate and rely upon existing CBOE surveillance procedures governing equities, and the Commission has found in the past that these procedures are adequate under the Act.¹⁴ In addition, the rules we are approving today contain specific listing and delisting criteria for IPSs that will help to ensure that the markets for IPSs will be deep and liquid to allow for the maintenance of fair and orderly markets. The Commission believes that these criteria should serve to ensure that the underlying securities of an IPSs series are well capitalized and actively traded, and that new series of IPSs do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has designated that a minimum of two

creation units, approximately 100,000 shares, will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the IPSs in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and distributing capital gains, if any, are characteristics of IPSs that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market pursuant to section 6(b)(5) of the Act.¹⁵

Furthermore, the Commission believes that the Exchange's proposal to trade IPSs in minimum fractional increments of $\frac{1}{64}$ 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 IPSs.

The Exchange represents that the Reporting Authority will disseminate for each Fund of IPSs an estimate, updated every 15 seconds, of the value of a share of each Fund. 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 Fund.¹⁶

The Commission also believes that the CBOE has developed adequate policies regarding trading halts in IPSs. Specifically, the Exchange would halt trading in IPSs if the circuit breaker parameters under CBOE Rule 6.3B were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in IPSs, the CBOE could consider factors such as those set forth in CBOE Rule 24.7, including: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b).

¹³ See *supra*, note 4.

¹⁴ See Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

¹⁵ 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).

¹⁶ Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

maintenance of a fair and orderly market are present.

In addition, the Commission believes that the IPSs proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading IPSs. All investors in IPSs will receive a prospectus prior to or concurrently with the confirmation of a transaction therein, including investors purchasing in secondary market transactions on the Exchange. The prospectus should address the special terms and characteristics of the particular IPSs Fund, including a statement regarding their redeemability and method of creation, and a statement that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions, and other factors.¹⁷

Furthermore, the Commission notes that prior to the commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific Fund and to applicable Exchange rules, such as trading halt rules. The circular will inform members of their responsibilities with respect to transactions in such IPSs and of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable, but must be redeemed in Creation Units only.

The Commission is approving in general the CBOE's proposed listing standards for IPSs, and, specifically, the listing of IPSs of a Fund based on the S&P 100. The Commission specifically notes that, notwithstanding approval of the listing standards for IPSs, other similarly structured products, including IPSs based on other indices, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed prior to contacting Division staff. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is based on Amex Rule 1000A *et seq.* and is similar to CBOE rules relating to IPRs,

both of which the Commission approved in the past.¹⁸ The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.¹⁹ The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. In view of these factors, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act, to approve the proposal today.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-CBOE-00-11) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-13954 Filed 6-2-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42835; File No. SR-CBOE-99-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Rights for Firms Crossing Orders.

May 26, 2000.

I. Introduction

On March 18, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rule governing the crossing of

equity option orders by floor brokers, to give the member firm from which an order originates ("originating firm") a participation right in trades that are proposed to be crossed in certain circumstances. Notice of the proposed rule change was published for comment in the **FEDERAL REGISTER** on July 16, 1999.³ The Commission received four comment letters regarding the proposal.⁴ On October 4, 1999, April 11, 2000, and May 25, 2000, the CBOE filed Amendment Nos. 1, 2, and 3, respectively, to the proposal.⁵ This order approves the proposed rule change, accelerates approval of Amendment Nos. 1, 2, and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

CBOE Rule 6.74 sets forth the procedures by which a floor broker holding a customer order ("original order") may cross it with either: (i) Another customer order or orders from the same originating firm: or (ii) a contra side order provided by the originating firm from its own proprietary account ("facilitation order").⁶

Under CBOE Rules 6.74(a) and (b), a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.⁷

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after

³ See Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494.

⁴ See Section III below for a description of the comment letters.

⁵ The substantive modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section IV.

⁶ Under the CBOE's rules, facilitation orders may be provided only to cross the orders of public customers. See CBOE Rule 6.74(b). This same stipulation is retained under the proposed rule change.

⁷ In the case where the floor broker is proposing to cross two customer orders, the crowd may take all or part of either customer order. In the case where the floor broker is seeking to effect a facilitation cross, the crowd may take all or part of the customer order.

¹⁷ Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

¹⁸ See *supra* notes 3 and 4.

¹⁹ 15 U.S.C. 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.