

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.<sup>14</sup> Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>15</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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-2003-57 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47983; File No. SR-Amex-2003-45]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard & Poor's 500 Stock Index

June 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 14, 2003, 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. On May 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving 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 list and trade under Section 107A of the Amex Company Guide ("Company Guide"),

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 27, 2003. Amendment No. 1, corrects the formulas for determining payment at maturity of the Notes.

<sup>4</sup> See letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 28, 2003. Amendment No. 2, replaces in its entirety Amendment No. 1.

notes linked to the performance of the Standard & Poor's 500 Index ("Index").

#### 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 Amex 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 Amex 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

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.<sup>5</sup> The Amex proposes to list for trading under Section 107A of the Company Guide notes, the performance which is linked to the Index (the "Accelerated Return Notes" or "Notes").<sup>6</sup> The Index is determined, calculated and maintained solely by S&P.<sup>7</sup> The Notes will provide for a multiplier of any positive performance

<sup>5</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR-Amex-89-29).

<sup>6</sup> Credit Suisse First Boston (USA), Inc. ("CSFB") and Standard & Poor's Corporation ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by CSFB and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

The Exchange stated that the Index value will be disseminated at least once every fifteen seconds throughout the trading day. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

<sup>7</sup> The Index is a broad-based stock index, which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941-1943 and is the reference point for all maintenance adjustments. The securities included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through the Nasdaq Stock Market, Inc. ("Nasdaq"). The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks.

<sup>14</sup> See *supra* notes 3-9.

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

of the Index during such term subject to a maximum payment amount or ceiling.

The Notes initially conform to the listing guidelines under Section 107A<sup>8</sup> and continued listing guidelines under Sections 1001–1003<sup>9</sup> of the Company Guide. The Notes are senior non-convertible debt securities of CSFB. The Notes will have a term of not less than one, nor more than ten years. CSFB will issue the Notes in denominations of whole units (a “Unit”), with each Unit representing a single Note. The original public offering price will be \$1000 per Unit. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the

Index. At maturity, if the value of the Index has increased over the term of the Notes, a beneficial owner will be entitled to receive a payment on the Notes equal to three (3) times the amount of that percentage increase, not to exceed a maximum payment (the “Capped Amount”) to be determined at the time of issuance of the Notes. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. Accordingly, the Notes are not “principal protected,” and are fully exposed to any decline in the level of

the Index.<sup>10</sup> The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive (the “Redemption Amount”) depends entirely on the relation of the average of the values of the Index at the close of the market on five (5) business days shortly before maturity of the Notes (the “Final Level”) and the closing value of the Index on the date the Notes are priced for initial sale to the public (the “Initial Level”).

If the Final Level is greater than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 + \left[ 3 \times \$1000 \times \left( \frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}} \right) \right], \text{ subject to Capped Amount.}^{11}$$

If the Final Level is less than the Initial Level, the Redemption Amount per Unit will equal:

$$\$1000 \times \left( \frac{\text{Final Level}}{\text{Initial Level}} \right)^{12}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, subject to a cap, and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of options on, and securities the performance of which

have been linked to or based on, the Index.<sup>13</sup>

As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of \$289.537 billion to a low of \$0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7.503 million shares<sup>14</sup> and from a high of 3.446 million shares to a low of 0.046 million shares respectively.

Because the Notes are issued in \$1,000 denominations, the Amex’s existing floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.<sup>15</sup> Second, even though the Exchange’s debt trading rules apply, the Notes will be subject to

the equity margin rules of the Exchange.<sup>16</sup> Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, CSFB will deliver a prospectus in connection with the initial sales of the Notes.

<sup>8</sup> The initial listing standards for the Notes require: (1) A market value of at least \$4 million; and (2) a term of at least one year. Because the Notes will be issued in \$1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 shareholders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of \$100 million, stockholder’s equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of \$200 million and stockholders’ equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders’ equity of at least \$20 million.

<sup>9</sup> The Exchange’s continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange’s Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where,

in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

<sup>10</sup> A negative return of the Index will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment.

<sup>11</sup> See Amendment No. 2, *supra* note 4.

<sup>12</sup> See Amendment No. 2, *supra* note 4.

<sup>13</sup> See Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and

trading of Portfolio Depository Receipts based on the Index); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the Index); 45160 (December 17, 2001) 66 FR 66485 (December 26, 2001) (approving the listing and trading of notes based on the Balanced Strategy Index); and 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes based on the Select Fifty Index.

<sup>14</sup> Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, to Hong-Anh Tran, Special Counsel, Division, Commission, dated May 27, 2003.

<sup>15</sup> Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

<sup>16</sup> See Amex Rule 462.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of section 6(b)(5),<sup>18</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market 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 change will impose any burden on competition.

### *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, 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 the File No. SR-Amex-2003-45 and should be submitted by July 2, 2003.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.<sup>19</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.<sup>20</sup> Accordingly, the Commission finds that the listing and trading of the Notes based on the Index is consistent with the Act and 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.<sup>21</sup>

As described more fully above, at maturity, the holder of a Note will receive an amount based upon the percentage change of the Index. Specifically, at maturity, the holder of a Note will be entitled to receive a payment equal to three times the amount of that percentage increase, not to exceed a certain maximum payment, if the value of the Index has increased over the term of such Note. The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to a cap.

The Commission notes that the Notes are not-leveraged, non-principal

protected instruments. The Notes are debt instruments whose price will be derived and based upon the value of the Index. The Notes do not have a minimum principal amount that will be repaid at maturity, and the payments of the Notes prior to or at maturity may be less than the original issue price of the Notes. Thus, if the value of the Index has declined at maturity, the holder of the Note will receive less than the original public offering price of the Note. Accordingly, the level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final rate of return of the Notes is derivatively priced and based upon the performance of an index of securities, because the Notes are debt instruments that do not guarantee a return of principal, and because investors' potential return is limited by the Capped Amount, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Exchange's proposal adequately addresses the concerns raised by this type of product.

First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities to: (1) determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that CSFB will deliver a prospectus in connection with the initial sale of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedure governing equities, which have been deemed adequate under the Act. Moreover, the Commission also notes that the Exchange has a general policy that prohibits the distribution of

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Securities Exchange Act Release Nos. 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the DJIA); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of non-principal protected notes linked to the Select Fifty Index); 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Balanced Strategy Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index).

<sup>21</sup> 15 U.S.C. 78f(b)(5). 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).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

material, non-public information by it employees.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Commission notes that the Index is determined, calculated, and maintained by S&P. As of May 12, 2003, the market capitalization of the securities included in the Index ranged from a high of \$289.537 billion to a low of \$0.353 billion. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 64.214 million shares to a low of 7,503 million shares and from a high of 3.446 million shares to a low of 0.046 million shares, respectively.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Exchange equity margin rules and debt trading rules will apply to the Securities. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Exchange has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential from manipulation of the underlying securities is minimal, thereby protecting investors and the public interest. The Commission further notes that the Index is managed by the S&P, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, CSFB. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue

securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.<sup>22</sup> In any event, financial information regarding CSFB, in addition to the information on the 500 common stocks comprising the Index, will be publicly available.<sup>23</sup>

The Commission also has a systemic concern, however, that a broker-dealer such as CSFB, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,<sup>24</sup> the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of CSFB.

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

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**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.<sup>25</sup> The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes there is good

<sup>22</sup> See Company Guide Section 107A.

<sup>23</sup> The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

<sup>24</sup> See Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

<sup>25</sup> See supra note 20.

cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,<sup>26</sup> to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-Amex-2003-45), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47957; File No. SR-CBOE-2003-20]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Marketing Fee Procedures

May 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 13, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change by the CBOE, which relates to marketing fee procedures. At the same time, the Commission is adopting the proposed rule change as a pilot program on an accelerated basis.

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

The CBOE hereby proposes to adopt, on a pilot basis, a new Interpretation and Policy .12 to CBOE Rule 8.7 specifying the procedures by which a trading crowd may determine whether to participate in the CBOE's marketing

<sup>26</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.