adopted by securities firms between different departments of firms to enhance the likelihood that knowledge of upcoming events will be isolated within a single group and not disclosed to other groups that might trade on or otherwise benefit from the information. Because many firms today already use information barriers between the research and trading departments of their firms, the Interpretation encourages the use of information barriers as the preferred method of complying with the Interpretation. If a member determines not to implement information barriers, it would carry the significantly greater burden of proving that stock accumulations or liquidations prior to the issuance of a research report had not been purposeful if an NASD investigation into the firm's buying or selling activity were initiated.

III. Summary of Comments

Two commenters objected to the Interpretation. A.G. Edwards stated that the Interpretation would adversely affect retail customers of a firm with an active research department. A.G. Edwards suggested that the Interpretation would prevent a firm from accumulating stock to satisfy expected customer demand once it issued a favorable research report. The A.G. Edwards Letter stated that a firm would need to use outside dealers in order to meet client demand for the security once the research report was issued. This, in turn, would cause the price of the security to rise, which would mean that retail orders would go unfilled or would be executed only at a price above the price at which the security was trading before the report was issued.

A.G. Edwards claimed that the Interpretation would discourage small issuers from issuing their securities because the Interpretation, if adopted, would discourage firms from initiating coverage of their securities. It also claimed that the Interpretation is flawed because it does not similarly prohibit firms from adjusting their inventory when conducting research not available for external distribution. A.G. Edwards suggested prohibiting firms from accumulating securities for a specified period in advance of the issuance of a favorable research report concerning the issuer of those securities, or requiring firms to sell accumulated securities to customers at a price based on the firm's average cost.

Brown & Wood also objected to the Interpretation. The Brown & Wood Letter stated that the Interpretation could not be intended to protect customers because it would apply not only to trading with a firm's own customers but to any trading with any person. The Brown & Wood Letter stated that the Interpretation would discourage firms from maintaining research staffs, would encourage firms not to distribute research to their customers, would encourage other firms not to maintain research staffs and would cause firms to transfer the value of their research without compensation.

The Commission does not believe that the objections raised by these commenters warrant disapproval of the Interpretation. The Commission notes that trading ahead of research reports raises questions about the motivation of the firm in issuing the research report and about the quality of information within the research report. In this regard, the Commission notes that a firm preparing a research report concerning a security solely for ''in-house'' use cannot expect the repot to affect public demand for the security; hence, such reports do not raise the same ''trading ahead'' concerns as do reports prepared for public investors.

Furthermore, the Commission does not believe that the prior accumulation of a security that is to be the subject of a favorable research report affects the level of investor demand for that security; therefore, the Commission does not believe that the Interpretation will cause firm customers to pay higher prices for the securities that are the subject of research reports than they would pay if firms could trade ahead of research reports.

The Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that the proposed rule change will increase investor confidence in the integrity of research reports, thereby protecting investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–28 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20155 Filed 8–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36070; International Series Release No. 837 File Nos. SR–Amex–94–55 and SR–CBOE–95–01]

Self-Regulatory Organizations; American Stock Exchange, Inc., and Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Changes Relating to the Listing and Trading of Warrants on the Deutscher Aktienindex (''DAX Index'')

August 9, 1995.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] on December 5, 1994, the American Stock Exchange, Inc. (''Amex'') filed with the Securities and Exchange Commission (''Commission''), and on January 5, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Commission, proposed rule changes to list and trade warrants on the Deutscher Aktienindex (''DAX Index'' or ''Index''). The Amex and the CBOE are collectively referred to herein as the ''Exchanges.'' Notices of the proposals appeared in the **Federal Register** on January 26, 1994.[3] The Commission received three comment letters concerning the proposed rule changes.[4] This order approves the Amex and the CBOE proposals.

II. Description of the Proposals

The Amex and the CBOE propose to list index warrants based on the DAX Index.

A. Composition and Maintenance of the Index

The DAX Index is a capitalization-weighted index of 30 German equity securities listed on the Frankfurt Stock Exchange (''FSE''). The capitalization of a particular stock in the Index is

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release Nos. 35249 (January 19, 1995), 60 FR 5236 (notice of File No. SR–Amex–94–55), and 35247 (January 16, 1995), 60 FR 5233 (notice of File No. SR–CBOE–95–01).

[4] All three letters were submitted on behalf of the Deutsche Börse AG, the Frankfurt Stock Exchange (''FSE''), and the Deutsche Terminbörse (''DTB''). The Deutsche Börse AG is a holding company formed in 1993 for the purpose of, among other things, assuming ownership and control of the FSE and the DTB. *See* Letter from Lawrence Hunt, Jr., Sidley & Austin, to Margaret McFarland, Deputy Security, Commission, dated March 21, 1995 (commenting on File No. SR–Amex–94–55), and letter from Lawrence Hunt, Jr., Sidley & Austin, to Margaret McFarland, Deputy Secretary, Commission, dated March 21, 1995, (collectively, ''Comment Letters''). The commenters subsequently submitted a follow-up statement to the Comment Letters. *See* Letter from Lawrence Hunt, Jr., Sidley & Austin, to Margaret McFarland, Deputy Secretary, Commission, dated July 19, 1995 (''July 19 Letter'').

calculated by multiplying its listed capital[5] by the price of the common stock (or if the common stock is not listed, the preferred stock) and a multiplier determined by the FSE. The stocks included in the DAX Index are among the largest German corporations, whose shares are among the most actively traded of German issuers. The Index is composed of securities representing more than ten broad industry groups, including chemicals, automobile manufacturers, banks, and insurance companies.[6]

The Index had a closing value of 2,184.33 on July 20, 1995. As of December 2, 1994, the 30 stocks comprising the Index ranged in individual market capitalizations from a low of approximately DM 1.17 billion (US. $841.73 million)[7] to a high of approximately DM 50.59 billion (U.S. $36.40 billion) with a mean capitalization of DM 13.88 billion (U.S. $9.99 billion). Also as of that date, the five largest stocks in the Index accounted for approximately 43.69% of the total weight of the Index with no single security accounting for more than 12.15% of the weight of the Index. Average daily trading volume in the components of the Index for the period from June 1, 1994, through November 30, 1994, ranged from a low of 59,408 shares to a high of 1,042,280 shares, with an average daily trading volume for an Index component during that period of 338,449 shares.

B. Calculation and Dissemination of the Index Value

The value of the DAX Index is calculated every minute by the FSE from 10:30 a.m. to 1:30 p.m., Frankfurt time (4:30 a.m. to 7:30 a.m. Eastern time), based on last sale prices of the component stocks. The value of the Index is disseminated over Reuters News Service, among others. The value of the Index, however, is not disseminated by the FSE until opening prices are available for at least 15 components of the Index representing at least 70% of the capitalization of the Index. Thereafter, with respect to any stock that has not yet opened for trading, the Index value is calculated using the previous day's closing price for those components.

In order to maintain continuity of the value of the Index, the FSE adjusts the Index to reflect certain events relating to the component stocks. For example, the FSE adjusts the Index value to reflect cash dividends paid on the component securities.[8] An adjustment is also applied by the FSE whenever a company issues new shares for which the shareholders have preemptive rights, or when other intra-year events, such as mergers and spinoffs, occur.

The number of listed shares of each stock used in the calculation of the value of the Index is updated by the FSE annually in September. At that time, the adjustment factors mentioned above, which reflect the dividend payments and/or intra-year adjustments, are re-scaled to one, with an additional adjustment made to maintain continuity in the value of the Index.

In addition, the composition of the Index is reviewed periodically by the FSE. It is the FSE's policy not to alter the composition of the DAX Index unless a stock ceases to meet the criteria that initially were the basis for including the stock in the Index. Replacements are usually made from a list of substitute stocks. If it is not possible to substitute a stock from the same industry group, a stock from another industry may be substituted.

C. Index Warrant Trading

The Amex proposes to list DAX Index warrants pursuant to Section 106 of the Amex Company Guide (''Guide''). Under Amex's rules, the Amex may approve for listing warrants on established foreign and domestic market indexes. The CBOE has similar authority to list warrants on foreign indexes pursuant to CBOE Rule 31.5(E).

The Amex and the CBOE represent that Index warrant issues will conform to the index listing guidelines contained in Section 106 of the Guide and CBOE Rule 31.5(E), respectively. Specifically, the listing guidelines of the Exchanges require that: (1) issuers of DAX Index warrants will be have assets in excess of $100,000,000 and otherwise substantially exceed the Exchanges' size and earnings requirements;[9] (2) the term of warrants will be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be 1,000,000 warrants, with as minimum of 400 public holders, and a minimum aggregate market value of $4,000,000.

The Exchanges will apply the same margin treatment for the purchase of Index warrants as they require for listed options.[10]

The proposed Index warrants will be direct obligations of their issuers subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American-style) or exercisable only immediately prior to their expiration date (*i.e.*, Europe-style). Upon exercise, the holder of an Index warrant structured as a ''put'' will receive payment in U.S. dollars to the extent that the DAX Index has declined below a cash settlement value specified at the time of issuance. Conversely, upon exercise, holders of an Index warrant structured as a ''call'' will receive payment in U.S. dollars to the extent that the DAX Index has increased above a cash settlement value specified at the time of issuance. Index warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Exchanges will also require that DAX Index warrants be sold only to customers whose accounts have been approved for options trading.[11] Second, the Exchanges' options suitability standards will apply to recommendations in Index warrants.[12] Third, the exchanges' rules regarding discretionary orders will also apply to transactions in Index warrants.[13]

Prior to the commencement of trading of Index warrants, the Exchanges will distribute circulars to their members calling attention to certain compliance responsibilities when handling transactions in Index warrants.

[5] Listed capital for a component security is determined based on an issuer's preferred and common shares registered for trading on the FSE. This is different from domestic capitalization-weighted indexes, such as the S&P 500 Index, the values of which are calculated based only on the shares of the issuer's common stock.

[6] The components of the Index are: Allianz AG Holdings; BASF AG; Bayer AG; Bayer Hypo/Wech; BMW; Bayer Vereinsbank AG; Commerzbank AG; Continental AG; Daimler-Benz AG; Deutsche Babcock AG; Deutsche Bank AG; Degussa AG; Dresdner Bank AG; Henkel KGAA-Pfd; Hoechst AG; Karstadt AG; Kaufhof Holdings AG; Lufthansa AG; Linde AG; Man AG; Metallgesellschaft; Mannesmann AG; Preussag AG; RWE AG; Schering AG; Siemens AG; Thyssen AG; Veba AG; Viag AG; and Volkswagen AG.

[7] Based on a current German mark/U.S. dollar exchange rate of approximately DM 1.39/U.S. $1.

[8] The FSE makes this adjustment because German companies usually pay their dividends only once per year (generally in June or July). If not adjusted, the annual dividend payment would result in a significant drop in the value of the Index at the time when the dividends are paid. As a result, the FSE calculates the dividend adjustment such that share prices reflect full dividend reinvestment.

[9] *See* Amex Guide Section 101 and CBOE Rule 31.5A.

[10] Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on July 21, 1995. *See* Amex Rule 462 and CBOE Rule 12.3.

[11] *See* Amex Rule 921 and CBOE Rule 9.7.

[12] *See* Amex Rule 411, Commentary .02 and CBOE Rule 9.9.

[13] *See* Amex Rule 421, Commentary .02 and CBOE Rule 30.50, Interpretation .04 (requiring that the standards of Rule 9.10 be applied to index warrant transactions).

D. Surveillance

The Exchanges will use their existing surveillance procedures to monitor trading in Index warrants. The Exchanges represent that they are currently negotiating to enter into separate surveillance sharing agreements with the FSE.

Both the Amex and the CBOE have submitted to Commission approval a proposed rule change governing, among other things, customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants.[14] DAX Index warrants issued subsequent to approval of those proposals will be subject to these new rules.

III. Comment Letters

Three comment letters were received by the Commission—one discussing the CBOE proposal, one discussing the Amex proposal, and one follow-up letter discussing both proposals. All three comment letters were submitted on behalf of the Deutsche Börse AG, DTB, and FSE. The first two letters received raised the same issues concerning the respective proposals.[15] The commenters assert that the FSE has a proprietary interest in the DAX Index which vests the FSE with the exclusive right to license its use for trading index products based on the DAX Index. According to the commenters, even if the Amex and CBOE had any rights to use the DAX Index or the ''DAX'' name, those rights either lapsed or were terminated by the Deutsche Börse AG.[16] As a result, the commenters argue that the proposals raise issues concerning intellectual property rights which should be resolved prior to Commission approval of the proposals.

Similarly, the commenters also assert that all surveillance agreements between the FSE and each of the Exchanges have either lapsed or been terminated by the Deutsche Börse AG.[17] As a result, the commenters conclude that it would be impossible for the Commission to find that the proposed DAX Index warrants would not be susceptible to manipulation. The commenters, however, have informed the Commission that the Deutsche Börse AG is currently negotiating with the CBOE and the Amex for purposes of entering into market surveillance agreements with each Exchange.[18]

Based on these arguments, the commenters conclude that it would be inappropriate for the Commission to approve the proposed rule changes until these issues are resolved.[19]

IV. Commission Findings

The Commission finds that the proposed rule changes are consistent with the requirements of the Act 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.[20] Specifically, the Commission believes that the trading of warrants based on the DAX Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the German equity market and provide a surrogate instrument for trading in the German securities market.[21] The trading of warrants based on the DAX Index should provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the German equity market.

In addition, the Commission believes, for the reasons discussed below, that the Amex and the CBOE have adequately addressed issues related to customer protection, index design, surveillance, and market impact of DAX Index warrants.

A. Customer Protection

Due to the derivative nature of index warrants, the Commission believes that DAX Index warrants should only be sold to investors capable of evaluating and bearing the risks associated with trading in such instruments and that adequate risk disclosure be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchanges that address the special concerns attendant to the secondary market trading of index warrants will be applicable to DAX Index warrants. In particular, by imposing the special suitability, account approval, disclosure, and compliance requirements noted above, the Amex and the CBOE have adequately addressed potential public customer problems that could arise from the derivative nature of DAX Index warrants. Moreover, the Amex and the CBOE plan to distribute circulars to their members identifying the specific risks associated with warrants on the DAX Index. Finally, pursuant to the Exchanges' listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue DAX Index warrants.

B. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the German equity market. First, the Index consists of 30 actively traded stocks listed by the FSE. Second, the market capitalizations of the stocks comprising the Index are very large. Specifically, the total capitalization of the Index, as of December 2, 1994, was approximately U.S. $299.55 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of $36.40 billion to a low of $841.73 million, with a mean value of $9.99 billion.[22] Third, no one particular stock or group of stocks dominates the weight of the Index. Specifically, as of December 2, 1994, no single stock accounted for more than 12.15% of the Index's total value, and the percentage weighting of the five largest issues in the Index accounted for 43.69% of the Index's value. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index derivative product based on foreign securities is to be traded in the United States.[23] In most

[14] *See* Securities Exchange Act Release Nos. 35086 (December 12, 1994), 59 FR 65561 (December 20, 1994) (notice of File No. SR–Amex–94–38), and 35178 (December 29, 1994), 60 FR 2409 (January 9, 1994) (notice of File No. SR–CBOE–94–34).

[15] *See* Comment Letters, *supra* note 4.

[16] *Id.* The commenters, however, have informed the Commission that the Deutsche Börse AG is currently negotiating with the CBOE and the Amex for purposes of licensing the DAX Index and the DAX name to the Exchanges for purposes of listing DAX Index warrants. *See* July 19 Letter, *supra* note 4.

[17] *See* Comment Letters, *supra* note 4.

[18] *See* July 19 Letter, *supra* note 4.

[19] *See* Comment Letters, *supra* note 4.

[20] 15 U.S.C. § 78f(b)(5) (1988).

[21] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[22] These figures are based on the German mark values as of December 2, 1994, but converted to dollars using the current exchange rate of approximately DM 1.39/U.S. $1.00.

[23] A comprehensive surveillance sharing agreement would allow the parties to the agreement to obtain relevant surveillance information,

Continued

cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would be difficult to conclude that an exchange listing a derivative product, such as a DAX Index warrant, would be able to monitor effectively trading involving the derivative product. Indeed, in commenting on the DTB's application to offer and sell DAX Index futures to U.S. persons, the Commission relied, in part, on the existence of a surveillance sharing agreement between the FSE and the DTB.[24]

With regard to the Amex and CBOE proposals, the Commission would prefer that comprehensive surveillance agreements be in place, and believes that such agreements play a particularly important role in ensuring the integrity of global securities markets. The Deutsche Börse AG, however, terminated license and market surveillance agreements between the FSE and the Exchanges as part of a now completed strategic review relating to competitive concerns surrounding the trading of the DAX Index products by the Exchanges.[25] Since completion of the strategic review, the Deutsche Börse AG has decided to commence active negotiations with the Exchanges regarding their listing and trading of DAX Index warrants and for the purpose of entering into new market surveillance sharing agreements.[26] The Commission views these new efforts favorably, and believes that a major market such as the FSE should readily enter into comprehensive surveillance sharing agreements.[27] Even in the absence of such agreements, however, the Commission does not believe that the Exchanges' proposals should continue to be detained pending the conclusion of these negotiations when an alternative with respect to obtaining surveillance information exists for the DAX Index products. Specifically, the U.S. Department of State and the German Foreign Office have exchanged Diplomatic Notes that provide a framework for mutual assistance in investigatory and regulatory matters (''Diplomatic Notes'').[28] The Diplomatic Notes confirm that the Commission is qualified to obtain assistance through the German Ministry of Justice under German law. Based on the existence of the Diplomatic Notes, the Commission believes that the German governmental authorities are committed to assistance in addressing cross-border fraud. In addition, the Commission could obtain from the German Ministry of Justice (and vice versa) information similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the FSE and the Amex and the CBOE with respect to transactions in FSE-traded stocks related to DAX Index warrant transactions on the Amex and the CBOE.[29] While this arrangement would certainly be enhanced by the existence of comprehensive surveillance sharing agreements, it is nonetheless consistent with other instances where the Commission has explored alternatives to direct exchange-to-exchange surveillance sharing agreements where the relevant foreign exchange was unwilling or unable to enter into a comprehensive surveillance sharing agreement.[30]

In addition, the Commission notes that there are factors relating to the computation of the DAX Index that further support reliance on arrangements other than direct exchange-to-exchange surveillance agreements. Specifically, the size of the market for the securities underlying the DAX Index makes it less likely that the proposed Index warrants are readily susceptible to manipulation.[31] For example, as of December 2, 1994, the market capitalization of the securities in the Index ranged from a low of approximately U.S. $841 million to a high of approximately U.S. $36 billion, and the average trading volume for individual Index component securities during the period from June 1, 1994, through November 30, 1994, ranged from a low of 59,408 shares per day to a high of over one million shares per day.

The Commission continues to believe strongly that the existence of comprehensive surveillance sharing agreements between the appropriate German entity(ies)[32] and each of the Exchanges would be important measures to deter and detect potential manipulations or other improper or illegal trading involving DAX Index warrants. Accordingly, the Commission urges the German parties and the Exchanges to continue in their present negotiations with the goal of finalizing formal comprehensive surveillance sharing agreements covering DAX Index warrants and the securities contained in the DAX Index as soon as practicable.[33]

D. Commission Response to Comment Letters

The comment letters received by the Commission in response to the proposed rule changes raise two issues—one concerning the potential for manipulation as a result of the lack of surveillance sharing agreements between the American and German exchanges, and the other concerning the FSE's intellectual property rights in the DAX Index and the DAX name.[34]

As stated above, the Commission believes that, even though new surveillance sharing agreements between the Deutsche Börse AG and the Exchanges have not yet been finalized, the Diplomatic Notes provide, in the interim, both the Commission and the German Ministry of Justice with the ability to obtain and share information necessary, among other things, to investigate suspected attempts at manipulation of the trading of DAX

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including, among other things, the identity of the ultimate purchasers and sellers of securities.

[24] *See* Letter to Elisse B. Walter, General Counsel, Commodity Futures Trading Commission (''CFTC''), from Brandon Becker, Director, Division of Market Regulation (''Division''), Commission, dated November 21, 1994.

[25] *See* July 19 Letter, *supra* note 4. The commenters stated that ''[b]ecause of the amount of work and discretion involved in maintaining the DAX Index, under both federal and state law, [the FSE] has a proprietary interest in its Index, which vests it with the exclusive right to license its use for trading in stock index products.'' *See* Comment Letters, *supra* note 4.

[26] *See* July 19 Letter, *supra* note 4.

[27] Ideally, such agreements should be broad in nature rather than designed to cover a specific product, such as DAX Index warrants. The absence of broad surveillance agreements slows down the introduction of new international products by forcing the relevant exchanges to amend product-specific surveillance sharing agreements every time a new product is introduced.

[28] *See* International Series Release No. 691, 1994 SEC LEXIS 2324 (July 22, 1994).

[29] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation relating to trading in DAX Index warrants or components of the DAX Index.

[30] *See, e.g.*, Letter to David R. Merrill, Deputy General Counsel, CFTC, from Brandon Becker, Director, Division, Commission, dated April 20, 1994 (Commission comment letter to the CFTC regarding the offer by the Osaka Securities Exchange of futures contracts based on the Nikkei 300 Index to U.S. persons), and letter to Joanne T. Medero, General Counsel, CFTC, from William H. Heyman, Director, Division, Commission, dated January 16, 1992 (Commission comment letter to the CFTC regarding the offers by the Osaka Stock Exchange and the Tokyo Stock Exchange of futures contracts based on the Nikkei 225 and TOPIX Indexes to U.S. persons).

[31] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including, among others, (1) the number of securities contained in the index or group, (2) the capitalizations of those securities, (3) the depth and liquidity of the group or index, (4) the diversification of the group or index, (5) the manner in which the index or group is weighted, and (6) the ability to conduct surveillance on the product. *See* Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992).

[32] This would probably be the FSE and/or the Deutsche Börse AG. *See* July 19 Letter, *supra* note 4.

[33] *See supra* notes 23 and 27.

[34] *See* Section III, *supra*.

Index warrants at the Exchanges and of the securities of which the DAX Index is composed. As a result, the Commission believes that the trading of DAX Index warrants by the Exchanges in the absence of comprehensive surveillance sharing agreements between the Exchanges and the relevant German entity(ies) does not raise any significant regulatory concerns.

Similarly, the Commission believes that the commenters' concerns over the FSE's proprietary interest in the DAX Index and the DAX name do not preclude the Commission from approving the proposed rule changes. Specifically, to the extent that the commenters' argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of an exchange's proposed rule change under the federal securities laws. To take such delaying action whenever a third party claim is asserted could stifle Commission review of new products proposed by self-regulatory organizations. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued elsewhere.[35] Accordingly, the commenters' assertions do not form a basis for the Commission to either disapprove or delay approval of the Exchanges' proposals.[36]

V. Conclusion

For the reasons described above, the Commission finds that the proposed rule changes by the Exchanges are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[37] Specifically, the Commission finds that the listing and trading of warrants based on the DAX Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the German equity market and provide a surrogate instrument for trading in the German securities market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule changes (File Nos. SR–Amex–94–55 and SR–CBOE–95–01), are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Jonathan, G. Katz,

Secretary.

[FR Doc. 95–20157 Filed 8–14–95; 8:45 am]

BILLING CODE 8010–01–M

[35] Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and has established specific federal agencies to administer these laws. Separate state causes of action also may be available to the holders of these proprietary rights, as well as possible recourse to German laws.

[36] *See* Securities Exchange Act Release Nos. 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989) (order approving the listing of index participations by the Amex, CBOE, and Philadelphia Stock Exchange), and 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990) (order approving the trading by the Amex of options on the Japan Index).

[37] 15 U.S.C. § 78f(b)(5) (1988).

[38] 15 U.S.C. § 78s(b)(2) (1984).

[39] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36092; File No. SR–CSE–95–03, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Customer Order Executions

August 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on August 11, 1995, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CSE hereby proposes to adopt certain order exposure and limit order protection policies for Exchange Rules 11.9(u) and 12.10.

The text of the proposed rule change is as follows, where additions are *italicized* and deleations are [bracketed].

Rule 11.9(u)

No Change

Interpretations and Policies:

.01 Price Improvement Opportunity

Consistent with his or her agency responsibility to exercise due diligence, a member must comply with the following procedures which provide the opportunity for public agency buy/sell orders to receive a price lower/higher than the disseminated national best offer/bid.

(a) Market Order Exposure—Except under unusual market conditions or if it is not in the best interest of the customer, when the spread between the national best bid and offer is greater than the minimum price variation, a member must either immediately execute the order at an improved price or expose the order on the Exchange for a minimum of thirty seconds in an attempt to improve the price.

.02 Limit Order Protection

Public agency limit orders shall be filled if one of the following conditions occur:

(a) the bid or offering at the limit price has been exhausted in the primary market (NOTE: orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market);

(b) there has been a price penetration of the limit in the primary market; or

(c) the issue is trading at the limit price on the primary market unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the customer and the Designated Dealer agree to a specific volume related or other criteria for requiring a fill.

In unusual trading situations, a Designated Dealer may seek relief from the above requirements from two Trading Practices Committee members or a designated member of the Exchange staff who would have the authority to set execution prices.

Rule 12.10 Best Execution

No Change

Interpretations and Policies

.01 As part of a member's fiduciary obligation to provide best execution for its customer orders, the member shall expose *on the Exchange* [to the national market system] all or a representative portion of any public agency limit order which is priced either on or between the national best bid and offer, unless:

(i) such order is immediately executed; or

(ii) the customer expressly requests that the order not be exposed.

If a representative portion of his or her limit order is executed, a member must treat the remainder of the order as a new order for the purpose of compliance with the Exchange's limit order exposure policy.