

Plan shall vote as required by applicable law and its governing Qualified Plan documents.

7. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

8. Each Fund will notify all Participants that disclosure in Separate Account or Qualified Plan prospectuses, or other disclosure documents, regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, an Qualified Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract holders participating in the Funds and the interests of Qualified Plans investing in the Funds may at some time be in conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. The Participants shall at least annually submit to each Board such reports, materials or data as such Boards may reasonably request so that such Boards may fully carry out obligations imposed upon them by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials and data to the appropriate Board when it so reasonably requests, shall be a contractual obligation of all Participants under the agreement governing their participation in the Funds.

10. All reports received by a board with respect to potential or existing conflicts and all board action with

regard to (a) determination of the existence of a conflict, (b) notification of Participants of the existence of a conflict and (c) determination of whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

11. If and to the extent Rule 6-92 or 6-93(T) is amended, or proposed Rule 6-93 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6-92 or 6-93(T), as amended, or Rule 6-93, as adopted, to the extent such rules are applicable.

12. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a Fund unless such Qualified Plan executes a fund participation agreement with such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

#### Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42750; File No. SR-CBOE-99-60]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance Standards for the Dow Jones High Yield Select Ten Index

May 2, 2000.

#### I. Introduction

On November 9, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, a proposed rule change. In its proposal, the CBOE seeks to clarify certain procedures regarding the maintenance of the Dow Jones High Yield Select 10 Index ("Index"). The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.<sup>3</sup> The Commission received no comments on the proposed rule change and this order approves the proposal.

#### II. Description of the Proposal

The CBOE currently lists and trades European-style, cash-settled options on the Dow Jones High Yield Select 10 Index, an equal weighted index composed of the ten highest yielding stocks from the 30 stocks in the Dow Jones Industrial Average ("DJIA"). The Index was designed to replicate a popular contrarian strategy that assumes that the ten highest yielding stocks in the DJIA are oversold and therefore, undervalued relative to the other stocks in the average. The index is reconstituted annually and the stocks comprising the index are retained for a full year.

Normally, the Index represents a subset of the DJIA. However, Dow Jones can change the components of the DJIA at any time, and in some cases remove stocks that also happen to be components of the Index. The strategy upon which the Index is based, and the convention followed by investors and money managers, calls for the portfolio to be held for a full year even if certain components are no longer part of the DJIA.

The maintenance procedures set forth in SR-CBOE-97-63 state that if it

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

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

<sup>3</sup> See Securities Exchange Act Release No. 42439 (February 18, 2000), 65 FR 10573.

becomes necessary to remove a stock from the Index, it will be replaced by the stock in the DJIA which has the highest yield of the stocks not already in the Index.<sup>4</sup> CBOE intended for this passage to describe the actions it would take if the shares of an Index component became unavailable for trading, either due to a corporate action such as a takeover or merger, or due to bankruptcy. However, CBOE made no distinction between this type of component change and a discretionary component change in the Dow Jones Industrial Average, in which the shares of a company removed from the DJIA continue to trade.<sup>5</sup>

CBOE, therefore, proposes to clarify its maintenance procedures under which component changes can be made to the Index. Specifically, if it becomes necessary to remove a stock from the Index in the event that its shares cease to trade and a proxy for those shares is not available, it will be replaced by the stock in the DJIA that has the highest yield of the stocks not already in the Index. If a stock is removed from the DJIA at the discretion of Dow Jones, but its shares continue to trade, that stock will remain in the Index until the time of the annual re-balancing.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.<sup>6</sup> In particular, the Commission finds the proposal is consistent with Section 6(b)(5)<sup>7</sup> of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because it helps protect investors. In the proposal, CBOE sets forth its procedures

<sup>4</sup> See Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (order approving SR-CBOE-97-63).

<sup>5</sup> On November 1, 1999, Dow Jones removed four stocks from the DJIA and replaced these stocks with new ones. These four stocks also happened to be components of the Index, *i.e.*, four of the highest yielding stocks in the DJIA. Before this component change in the DJIA, CBOE realized that, contrary to industry practice, its maintenance rules for the index required it to remove the four stocks from the Index. To prevent these Four stocks from being removed from the Index until the annual rebalancing of the Index, CBOE submitted a rule change under Section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 42187 (November 30, 1999), 64 FR 68708 (December 8, 1999).

<sup>6</sup> In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

for maintaining the Index when the Dow Jones corporation decides to replace a stock in the Dow Jones Industrial Average. CBOE's procedures will now be consistent with industry practice for maintaining the Index, which should help protect investors by eliminating potential confusion about the composition of the Index. Further, this clarification helps protect investors because it gives investors advance notice about the treatment of the Index and, therefore, allows them to make an informed investment decision.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-99-60) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42761; File No. SR-NASD-00-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Disclosure Requirements for Transactions Involving Callable Common Stock and Amendment Nos. 1 and 2 Thereto

May 5, 2000.

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 April 25, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 1, 2000 and May 3, 2000, the Exchange submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change.<sup>3</sup>

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

<sup>3</sup> In Amendment Nos. 1 and 2, the Exchange reworded the proposed language in the

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

NASD Regulation is proposing to interpret NASD Rule 2110, Standards of Commercial Honor and Principles of Trade, to require a member that provides a written confirmation for a transaction involving callable common stock to disclose on the written confirmation that the security is callable and that the customer may wish to contact the member for more information. Below is the text of the proposed rule change. Proposed new language is italicized.

#### IM-2110-6. Confirmation of Callable Common Stock

*Any member providing a customer confirmation pursuant to SEC Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation that:*

- *The security is callable common stock; and*
- *A customer may contact the member for more information concerning the security.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation 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

An issuer's common stock generally continues to trade on a market until the issuer fails to meet the market's listing requirements, combines with another

interpretation for clarity. No substantive changes were made in the amendments. See Letters from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 28, 2000 ("Amendment No. 1") and May 2, 2000 ("Amendment No. 2").