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

The CBOE proposes to amend CBOE Rules 5.3 and 5.4 relating the listing and trading of options on American Depository Receipts ("ADRs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise certain of the Exchange's rules relating to the listing and maintenance criteria for options on ADRs, as set forth in two separate Interpretation and Policies, one under CBOE Rule 5.3 and one under CBOE Rule 5.4.

## Listing Criteria for Options on ADRs

The first set of changes concern Interpretation .03 under Rule 5.3. Currently, the Exchange may list options on ADRs that meet the criteria and guidelines set forth in Rule 5.3 and the interpretations thereunder if any of the following conditions are satisfied: (i) The Exchange has in place an effective surveillance agreement 3 with the primary exchange in the home country in which the security underlying the ADR is traded; (ii) the combined trading volume of the ADR, the security underlying the ADR, other classes of common stock related to the security underlying the ADR, and ADRs overlying such other classes of common stock (collectively "other related ADRs and securities") occurring in the U.S. ADR market represents (on a share equivalent basis) at least 50% of the

combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading ("50% Test"); or (iii) the Commission otherwise authorizes the listing.

The proposed rule change would amend CBOE Rule 5.3, Interpretation .03 in two ways. First, the manner by which the applicable percentage of worldwide trading volume is calculated would be revised. Second, a new set of criteria for the listing of options on ADRs, based on daily trading in the U.S., would be added.

The 50% Test will be revised so that trading in ADRs and other related ADRs and securities in any market with which the Exchange has in place an effective surveillance sharing agreement will be added to U.S. ADR market volume. Currently, only trading in the U.S. ADR market counts towards satisfying the 50% Test. The Exchange believes it is legitimate to add the trading volume in the markets with which the Exchange has in place comprehensive surveillance sharing agreements to U.S. market trading volume because the Exchange is able to monitor trading activity in these other markets.

Interpretation .03 to Rule 5.3 would also be revised by adding a fourth set of criteria under which the Exchange could list options on ADRs. This new standard ("Daily Trading Volume Standard'') will permit the Exchange to list options on ADRs if each of the following three conditions is met: (1) The combined trading volume for the ADR and other related ADRs and securities occurring in the U.S. ADR market or in any market with which the Exchange has in place an effective surveillance agreement represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading, (2) the average trading volume for the ADR in the U.S. ADR market over the three months preceding the date of selection of the ADR for options trading is at least 100,000 shares per day, and (3) the trading volume for the ADR in the U.S. ADR market is at least 60,000 shares per day for a majority of the trading days for the three months preceding the date of selection of the ADR for options trading

This new standard, like the 50% Test, will allow the listing of options on ADRs in the absence of a surveillance sharing agreement between the Exchange and the home country where the security underlying the ADR is

traded. The Exchange notes that the Daily Trading Volume Standard differs from the 50% Test in three respects. First, the percentage trading requirement is lowered to 20% from 50%. Countervailing this reduced percentage, which by itself would tend to relax the listing standards, are two numerical U.S. trading volume requirements—one that would require a high average daily U.S. trading volume and the other that would require a certain level of trading on a majority of days in the preceding three months. The existing criteria for listing options on ADRs do not have similar trading volume requirements.

The Exchange believes that the Daily Trading Volume Standard is justified because it will enable the Exchange to list options on ADRs that are widely followed by U.S. investors but that do not meet the 50% Test. At the same time, however, these ADRs must have high trading volume in the U.S. ADR market. The Exchange believes that this requirement of observable, high trading volumes, should ameliorate any regulatory concerns regarding investor protection.

Maintenance Criteria for Options on ADRs

The proposed rule change would also establish new maintenance criteria corresponding to the new listing criteria discussed above. Currently, Interpretation .09 to Rule 5.4 prohibits the Exchange from opening trading on any additional series of options on an ADR that was initially listed under the 50% Test if the U.S. trading volume over a subsequent three month period is less than 30% of worldwide trading volume, unless either (1) the Exchange has in place an effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded, or (2) the Commission has otherwise authorized the listing.

The proposed new maintenance criteria would prohibit the Exchange from opening trading on any additional series of options on an ADR that was initially listed pursuant to the proposed Daily Trading Volume Standard unless (A) the percentage of worldwide trading volume in the ADR and other related ADRs and securities that takes place in the U.S. ADR market or in markets with which the Exchange has in place surveillance sharing agreements for any consecutive three month period is either (i) at least 30% without regard to the average trading volume in the ADR, or (ii) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at least 70,000

<sup>&</sup>lt;sup>3</sup> The Commission defines an effective (*i.e.*, comprehensive surveillance agreement as one pursuant to which the Exchange can obtain not only information regarding the identity of exchange members executing trades, but also the information regarding the identity of the ultimate customer.