[Release No. 34–36528; File No. SR–CBOE– 95–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Listing Standards for Options on Equity Securities Issued in a Reorganization Transaction Pursuant to a Public Offering or a Rights Distribution

November 29, 1995.

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 October 19, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. 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 Chicago Board Options Exchange, Inc. ("CBOE or the Exchange") proposes to amend its listing standards in respect of options on equity securities issued in a spin-off, reorganization, recapitalization, restructuring or similar transaction where the issuance is made pursuant to a public offering or a rights distribution.

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, 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 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 amend the special listing standards set forth in Interpretation and Policy .05 under Exchange Rule 5.3 that apply to options on equity securities issued in certain spin-offs, reorganizations, recapitalizations, restructurings or similar transactions (referred to herein as "restructuring transactions") so as to also include securities issued pursuant to a public offering or a rights distribution that is part of a restructuring transaction.

Interpretation and Policy .05 under Exchange Rule 5.3 is intended to facilitate the listing of options on equity securities issued in restructuring transactions (referred to as "Restructure Securities") by permitting the Exchange to base its determination as to the satisfaction of certain of the listing standards set forth in Exchange Rule 5.3 and Interpretation and Policy .01 thereunder by reference to specified characteristics of the "Original Security" in respect of which the Restructure Security was issued or distributed or of the trading market of the Original Security, or by reference to the number of shares of the Restructure Security issued and outstanding or to the listing standards of the exchange on which the Restructure Security is listed. Interpretation and Policy 5.3.05 permits the Exchange to certify a Restructure Security as options eligible sooner than if it had to wait until it could base its certification on characteristics of the Restructure Security itself, but only in circumstances where the factors relied upon make it reasonable to conclude that the Restructure Security will in fact satisfy applicable listing criteria.

As recently approved by the Commission, CBOE Interpretation and Policy 5.3.05 does not extend to restructuring transactions involving the issuance of a Restructure Security in a public offering or a rights distribution.3 Although these kinds of restructuring transactions were included in Interpretation and Policy 5.3.05 as initially filed, CBOE subsequently amended that filing to eliminate them in order to permit the Commission to approve that filing without having to address the special questions raised by public offerings and rights distributions. At that time it was anticipated that CBOE would file a separate rule change proposing the extension of

Interpretation and Policy 5.3.05 to restructuring transactions that involve public offerings and rights distributions.⁴

The question raised by the proposed extension of Interpretation and Policy 5.3.05 to reorganization transactions involving public offerings or rights distributions reflect that when a Restructure Security is issued in a public offering or pursuant to a rights distribution, it cannot automatically be assumed that the shareholder population of the Restructure Security and the Original Security will be the same. Instead, the holders of a Restructure Security issued in a public offering will be those persons who subscribed for and purchased the security in the offering, and the holders of a Restructure Security issued in a rights distribution will be those persons who elected to exercise their rights. Even in the case of a distribution of nontransferable rights to shareholders of the Original Security, not all such shareholders may choose to exercise their rights. As a result, it cannot be assumed that the Restructure Security will necessarily satisfy listing criteria pertaining to minimum number of holders, minimum public float and trading volume simply because the Original Security satisfied these criteria.

On the other hand, the Exchange believes that the same reasons for wanting to make an options market available without delay to holders of securities issued in reorganizations that do not involve public offerings or rights distributions apply with equal force to securities issued in reorganizations that do involve public offerings or rights distributions, so long as there can be reasonable assurance that the securities satisfy applicable options listing standards. That is, holders of an Original Security who utilize options to manage the risks of their stock positions may well find themselves to be holders of both the Original Security and the Restructure Security following a reorganization because they chose to purchase the Restructure Security in a public offering or to exercise rights in order to maintain the same investment position they had prior to the reorganization. Such holders may want to continue to use options to manage the risks of their combined stock position after the reorganization, but they can do so only if options on the Restructure Security are available. The Exchange

¹ 15 U.S.C. 78s(b)(1).

^{2 17} CFR 240.19b-4.

³ See Securities Exchange Act Release No. 36020 (July 24, 1995), 60 FR 39029 (July 31, 1995) (order approving CBOE Interpretation and Policy 5.3.05).

⁴ See Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to Sharon M. Lawson, Assistant Director, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated June 13, 1995 ("File SR–CBOE–95–11 Letter").