

large. Specifically, the total capitalization of the Index, as of December 8, 1994, was US\$2.24 trillion, with the market capitalizations of the individual stocks in the Index ranging from a high of US\$76.99 billion to a low of US\$0.69 billion, with a median value of US\$3.36 billion and a mean of US\$7.46 billion. Third, no one particular stock or group of stocks dominates the Index. Specifically, no single stock comprises more than 3.438 percent of the Index's total value, and the percentage weighting of the five largest issues in the Index accounts for 14.495 percent 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 product comprised of foreign securities is to be traded in the United States. In most cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Nikkei 300 Index warrant, was not readily susceptible to manipulation.

Although the CBOE and the TSE do not yet have a written comprehensive surveillance sharing agreement that covers the trading of Nikkei 300 Index warrants, a number of factors support approval of the proposal at this time. First, while the size of an underlying market is not determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the size of the market for the securities underlying the Nikkei 300 Index makes it less likely that the proposed Index warrants are readily susceptible to manipulation.²⁰ In addition, the Commission notes that the TSE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivatives markets. Accordingly, the

²⁰ 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 (1) the number of securities comprising 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).

Commission believes that the ongoing oversight of the trading activities on the TSE by the MOF will help to ensure that the trading of Nikkei 300 Index warrants will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, the Commission and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.²¹ Moreover, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the CBOE and the TSE with respect to transactions in TSE-traded stocks related to Nikkei 300 Index warrant transactions on the CBOE.²²

Nevertheless, the Commission continues to believe strongly that a comprehensive surveillance sharing agreement between the TSE and the CBOE covering Nikkei 300 Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Nikkei 300 Index warrants. Accordingly, the Commission believes it is critical that the TSE and the CBOE continue to work together to consummate a formal comprehensive surveillance sharing agreement to cover Nikkei 300 Index warrants and the component securities as soon as practicable.

D. Market Impact

The Commission believes that the listing and trading of Nikkei 300 Index warrants on the CBOE will not adversely impact the securities markets in the United States or in Japan. First, the existing index warrant surveillance procedures of the CBOE will apply to warrants on the Index. In addition, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded on the TSE.

²¹ See Memorandum of United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

²² It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

IV. Accelerated Approval of Amendments No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 1 is consistent with Section 6(b)(5), in that it contains representations by the Exchange, concerning margin, options approved accounts, and surveillance, which serve to protect investors and the public interest, promote just and equitable principles of trade, and prevent fraudulent and manipulative acts and practices. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 1. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with Commission, and all written communications relating to the foregoing 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W. Washington, D.C. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-94-32, and should be submitted by January 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-CBOE-94-32), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

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²³ 15 U.S.C. 78s(b)(2) (1988).

²⁴ 17 CFR 200.30-3(a)(12) (1993).