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For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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[FR Doc. 00-30666 Filed 11-30-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43611; File No. SR-CBOE-99-14]

### Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change Relating to Listing Criteria for Index Warrants

November 22, 2000.

#### I. Introduction

On April 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with 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 thereunder,<sup>2</sup> a proposed rule change to amend its Rule 31.5.E to add an alternative set of distribution criteria for stock index warrants. Notice of the proposed rule change was published in the **Federal Register** on May 13, 1999.<sup>3</sup> On August 2, 1999, and September 20, 2000, the CBOE filed Amendment Nos. 1 and 2 to the proposal, respectively.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, accelerates approval of Amendments Nos. 1 and 2, and solicits comments from interested persons on the amendments.

#### II. Description of the Proposal

Currently, before a stock index warrant may be listed for trading on the CBOE, certain public distribution requirements must be met. These criteria are enumerated in CBOE Rule 31.5.E(2):

1. The issue must include at least one million warrants outstanding.
2. The principal amount/aggregate market value must be at least \$4,000,000.
3. There must be at least 400 public holders.

In addition, according to the CBOE, industry practice has been to discourage the listing of instruments of this kind that are priced below \$4 per unit. The CBOE states that it finds this practice appropriate, although Rule 31.5E does not specifically impose this restriction.

The proposed rule change would establish an alternative set of distribution criteria, eliminating the minimum public holder requirement. To list a stock index warrant under this alternative, the following requirements would need to be satisfied:

1. The issue would need to include at least two million warrants outstanding—double the current requirement.
2. The principal amount/aggregate market value would need to be at least \$12,000,000—triple the current requirement.
3. The minimum initial price would need to be set at \$6 per warrant—one and one-half times the minimum initial price as would be required under current informal guidelines.
4. A minimum number of public holders would be required as determined on a case by case basis.

The CBOE states that it is seeking to eliminate the 400-holder requirement so that it can be more competitive with the overseas and over-the-counter (OTC) derivatives markets in the listing of index warrants.

As explained by the Exchange, offerings of stock index warrants—unlike offerings of common stock and common stock warrants—are limited to options-approved accounts and are primarily directed to institutional and high net worth clients. Finding 400 initial holders thus may entail an extensive and time-consuming marketing effort. As a result, member firms have told the Exchange that they often find it considerably more cost effective to offer stock index warrants either offshore or in the OTC derivatives market.

The proposed rule change would create an alternative set of public distribution criteria under which no

minimum number of public holders would be defined, but would be determined by the Exchange on a case-by-case basis. At the same time, this alternative set of criteria would require the issue to be significantly larger in terms of number of warrants outstanding and their aggregate market value, besides imposing a minimum initial price for each warrant that reflects a substantial increase from the minimum initial price currently required for listing on the CBOE.

#### III. Discussion

After careful review, the Commission finds the proposed rule change to be consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section 6(b)(5)<sup>5</sup> of the Act, and with the rules and regulations thereunder.<sup>6</sup> The Commission believes that the proposal is reasonably designed to enable the CBOE to better compete with the overseas and OTC derivatives markets for the trading of stock index warrants, while raising no significant investor protection issues.

In lieu of the requirement that there be 400 public holders, the Exchange proposes to double to two million the minimum number of warrants that must be outstanding for the CBOE to list and trade a stock index warrant. In addition, the Exchange proposes to triple to \$12 million the principal amount/aggregate market value of the warrants and increase to \$6 the minimum initial price for listing the warrant. In addition, the Exchange on a case by case basis will specify a minimum number of public holders of the warrant.

These additional protections should serve to assure that there are adequate thresholds for the Exchange to list and trade a particular stock index warrant that does not otherwise satisfy the requirement of 400 public holders. Thus, the Commission believes the ability of market makers to maintain markets in such instruments should not be impaired.<sup>7</sup>

<sup>5</sup> 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade and protect investors and the public interest.

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> The Commission notes that for new narrow-based stock index warrants that it lists for trading, the CBOE may be able to file a Form 19b-4(e) pursuant to the provisions of Rule 19b-4(e) under the Act, 17 CFR 240.19b-4(e), in fulfillment of its rule change filing requirements. See CBOE Rule 24.2(b), which has been made applicable to narrow-based index warrants by CBOE Rule 31.5E, Interpretation .01.

<sup>15</sup> 17 CFR 200.30-3(a)(16).

<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. 41376 (May 6, 1999), 64 FR 25937.

<sup>4</sup> Amendment No. 1 elaborates upon the rationale for the proposal and how liquidity may be insured when the current, 400-holder requirement is deleted. See Letter from Stephanie C. Mullins, Attorney, the CBOE, to Mandy Cohen, Special Counsel, Division of Market Regulation ("Division"), the Commission, dated July 29, 1999. Amendment No. 2 clarifies the intent of the CBOE to apply the proposed rule change to apply to narrow-based index warrants, in addition to broad-based index warrants. See Letter from Angelo Evangelou, Attorney, the CBOE, to Ira Brandriss, Attorney, Division of Market Regulation, the Commission, dated September 19, 2000. See also Section III below.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 merely elaborates on the rationale for the proposal. Amendment No. 2 makes clear that the proposed rule change will apply to narrow-based index warrants as well as broad-based index warrants. Although the descriptive section of the original filing referred to broad-based index warrants, the actual text of the proposed rule change in that filing made no distinction between the two. The purpose of the proposal as it relates to broad-based index warrants relates equally to narrow-based index warrants: to enable the CBOE to compete with the overseas and OTC derivative markets in the trading of these instruments. The Commission's belief that elimination of the 400 public holder requirement would not significantly impact investors also applies equally to narrow-based index warrants. Acceleration of the amendment will allow the Exchange to implement the proposed rule change to all stock index warrants at once.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-14 and should be submitted by December 22, 2000.

#### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the

proposed rule change (SR-CBOE-99-14), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-30670 Filed 11-30-00; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43618; File No. SR-EMCC-00-05]

#### **Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Seeking To Increase the Minimum Clearing Fund Requirement for All EMCC Members to \$3,000,000 and To Establish Two Tiers of Inter-Dealer Broker Membership Standards**

November 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 14, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 16, 2000, and November 1, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change (1) would increase the minimum clearing fund requirement for all EMCC members to \$3,000,000 and (2) would establish two tiers of inter-dealer broker ("IDB") membership standards.

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

In its filing with the Commission, EMCC 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. EMCC has prepared

summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

#### *(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 (i) increase the minimum clearing fund requirement for all EMCC members to \$3,000,000 from the current required minimum of \$1,000,000 and (ii) provide two tiers of IDB membership standards.<sup>3</sup>

With respect to the proposed increased minimum clearing fund requirement, EMCC's risk advisory subgroup reviewed EMCC's two years of operations, including trade files and daily margin calculations. The subcommittee concluded that, generally, members' calculated clearing fund requirements did not go below \$3,000,000. Moreover, raising the minimum requirement from \$1,000,000 to \$3,000,000 is consistent with the clearing fund requirements imposed on IDBs by other clearing corporations,<sup>4</sup> and it addresses the fact that IDB members have a potential clearing fund loss liability that could well exceed the current \$1,000,000 clearing fund minimum. Accordingly, EMCC has determined that it would be more appropriate to have a greater amount of IDB funds on hand to cover the potential exposure than to have to request such a deposit if needed due to a loss. Therefore, EMCC has decided to increase IDB's minimum clearing fund requirement to \$3,000,000 and has determined that it is appropriate to have this standard apply to all members.

The rule change also proposes to separate IDBs into two membership categories based on excess net capital or excess financial resources. Those IDBs with excess net capital, or excess financial resources for a broker or dealer regulated by the Securities and Futures Authority Limited, of between \$10,000,000 and \$20,000,000 would be margined using an "event factor" of 1.5 instead of the factor of 1.25 currently used in EMCC's base margining formula. This factor is representative of the volatilities experienced during the last three emerging market events.<sup>5</sup> Those

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

<sup>3</sup> EMCC's Rules define an IDB as "a broker-dealer that conducts securities trading which matches buyers and sellers who are banks or dealers, and who is designated as such by the Corporation."

<sup>4</sup> See, e.g., Government Securities Clearing Corporation Rule 4, Section 2(c).

<sup>5</sup> October, 1997 (Asia), August, 1998 (Russia), and January, 1999 (Brazilian).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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