

investors. Trading of these products will be subject to the full panoply of CBOE rules and procedures that govern the trading of equity securities on the CBOE, including, among others, rules governing margin, the priority, parity and precedence of orders, responsibilities of the specialist, and operational and regulatory trading halts.<sup>20</sup>

The Commission further finds that adopting generic listing standards for these securities and applying Rule 19b-4(e) of the Act should fulfill the intended objective of that rule by allowing those TIR products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) of the Act for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic listing standards through regular inspection oversight.

The Commission further finds that: (1) by requiring that the underlying securities in a TIR be registered under Section 12 of the Act and listed on a national securities exchange or Nasdaq; and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchange's proposed listing criteria will help to insure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those TIR products listed and traded pursuant to Rule 19b-4(e) of the Act. The Commission finds that these listing criteria will help to ensure that no security underlying a TIR will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various TIRs to meet investors' needs. The Commission further finds that these criteria should serve to ensure that the securities underlying such TIRs are well capitalized and actively traded, which will help ensure that U.S. securities markets are not adversely affected by the listing and trading of new TIRs under Rule 19b-4(e) of the Act.

Additionally, the Exchange's delisting criteria set forth in CBOE Rule 31.94.I allow it to consider the suspension of trading and the delisting of a TIR if an

event occurs that makes further dealings in such securities inadvisable. This will give the CBOE flexibility to delist TIRs if circumstances warrant.

The Commission further notes that, in connection with its previous review and approval of CBOE Rule 31.5.N, it approved the Exchange's surveillance procedures and disclosure and prospectus delivery requirements for TIRs.<sup>21</sup> In accord with these previous findings, the Commission believes that these rules, which will govern the trading of TIRs pursuant to Rule 19b-4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission finds that the proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading TIRs.

Finally, the CBOE will file Form 19b-4(e)<sup>22</sup> with the Commission within five business days of commencement of trading a TIR under the generic standards.<sup>23</sup>

Accordingly, the Commission believes that the CBOE's proposed rules governing the listing and trading of TIRs pursuant to Rule 19b-4(e) will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.<sup>24</sup>

Furthermore, the Commission finds that the proposal to provide an alternate eligibility criteria for component securities received as part of a distribution or as a result of a merger, consolidation, corporate combination or other event to remain in the trust should enhance competition by enabling the CBOE to better compete with other markets trading TIRs and notes that the Commission has previously approved similar listing standards modifications for the Amex.<sup>25</sup>

Finally, the Commission finds that the proposal to increase from twenty-five percent to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index or portfolio of an IPR or IPS should provide additional flexibility to unit investment trusts (in cases of IPRs) or mutual funds (in cases of IPSs) to be listed pursuant to Rule 19b-4(e) of the Act in structuring their products and should help reduce possible concerns associated with a single stock exceeding

the twenty-five percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. Furthermore, the Commission notes that it has previously approved a similar proposal by the Amex to increase to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index.<sup>26</sup>

Accordingly, the Commission finds good cause, consistent with Section 6(b)(5) of the Act,<sup>27</sup> to approve the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.<sup>28</sup>

## V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-CBOE-2001-48) is hereby approved an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44906; File No. SR-CBOE-2001-53]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Allow Spread Orders Involving Certain Broad-Based Index Options and Options on Exchange Traded Funds To Be Executed at a Single Trading Post

October 4, 2001.

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 September 20, 2001, 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

<sup>26</sup> See *supra* noted 9.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</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>21</sup> See Original Approval Order, *supra* note 5.

<sup>22</sup> 17 CFR 249.820.

<sup>23</sup> See 17 CFR 19b-4(e)(2).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See *supra* note 7.

<sup>20</sup> *Id.*

prepared by the Exchange. On October 2, 2001, CBOE submitted Amendment No. 1 to the proposal.<sup>3</sup> CBOE filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend CBOE Rule 24.19, *OEX-SPX Spread Orders*, to apply its terms to certain order broad-based index options and options on exchange traded fund shares listed and traded on the Exchange. The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

### **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. 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**

##### **1. Purpose**

In 1997, the Commission approved CBOE Rule 24.19 which sets forth a special procedure to facilitate the transaction of both legs of a spread order between OEX and SPX options at either the OEX or the SPX trading post.<sup>6</sup> The Exchange believes that CBOE Rule 24.19 has provided both customers and traders of OEX and SPX options an

efficient manner of conducting business involving the two option classes while protecting the customer orders in the customer limit order books of both products and the customer orders being represented in the crowd at both trading posts.

The purpose of the proposed rule change is to apply CBOE Rule 24.19 to spread orders involving certain other broad-based index options and options on exchange traded fund shares derived from broad-based indices ("ETF Options") that are currently listed and traded on the Exchange, in addition to OEX and SPX options. The additional broad-based index options that would be included under CBOE Rule 24.19 are options on the Mini-NDX Index (MNXS<sup>SM</sup>) and the Nasdaq 100 Index (NDX).<sup>7</sup> The ETF Options that would be included under CBOE Rule 24.19 are options on the iShares S&P 100 Index Fund (OEF) and Nasdaq 100 Tracking Stock (QQQ).<sup>8</sup> The Exchange is not proposing to change any of the procedures in the Rule for representing and filing spread orders. Customers and traders alike often employ spread strategies using these products for hedging and risk management. The Exchange believes that expanding the applicability of Rule 24.19 to these products will encourage the use of spread orders involving these products and provide an alternative to cross market hedging of these products.

Paragraph (a) of CBOE Rule 24.19 would be revised to define a "Broad-Based Index Option" for purposes of the rule to mean MNX, NDX, OEX, XEO, OEF, QQQ, and SPX options, and any other broad-based index option or ETF Option that is determined by the appropriate Floor Procedure Committee to create an appropriate hedge with any other Broad-Based Index Option under

CBOE Rule 24.19. Revised paragraph (a) also would define a "Multi-Class Broad-Based Index Option Spread Order" ("Multi-Class Spread Order") as an order to buy a stated number of contracts of a Broad-Based Index Option and to sell an equal number, or an equivalent number, of contracts of a different Broad-Based Index Option. The proposed amendments to CBOE Rule 24.19 would apply only to Multi-Class Spread Orders composed of: (1) Any combination of MNX, NDX, or QQQ (MNX-NDX, MNX-QQQ, and NDX-QQQ); (2) any combination of OEF, OEX, XEO, or SPX (OEX-SPX, OEX-OEF, OEF-SPX, etc.); and (3) any other combination of related Broad-Based Index Options as determined by the appropriate Floor Procedure Committee.

When making its determination what products and spread strategies would be eligible for execution pursuant to CBOE Rule 24.19, the appropriate Floor Procedure Committee would consider, among other things, whether the particular index options classes under consideration are derived from the same underlying index, whether the particular index options classes have underlying indices that have a close relationship in their price movement, and whether there is customer demand for the particular spread strategy. The Exchange has proposed to include the spread orders listed above under CBOE Rule 24.19 because of customer demand for these strategies for hedging and risk management purposes. For example, spread strategies between OEX/XEO and OEF options are used to hedge risk as they are each based on the S&P 100.<sup>9</sup> Likewise, spread strategies between MNX, NDX, and QQQ options are proposed to be included under CBOE Rule 24.19, as each of these options classes are based on the Nasdaq 100 Index, and each option class is frequently used to hedge positions in one of the other classes. Spread strategies between OEF and SPX would be included under CBOE Rule 24.19 as OEF options, like OEX and XEO options, can also be hedged with SPX options.

The procedures to be followed in representing and filling a Multi-Class Spread Order, set forth in paragraph (b) of CBOE Rule 24.19, remain the same as the current procedures for representing and filing an OEX-SPX spread order, except for one minor change. The Exchange proposes to revise paragraph (b)(i) of CBOE Rule 24.19 to provide that, immediately after a Multi-Class

<sup>7</sup> The Exchange is also proposing to explicitly include XEO options under CBOE Rule 24.19. XEO options are a new series of OEX options with a European-style, rather than American-style, exercise feature. See Securities Exchange Act Release No. 44556 (July 16, 2001), 66 FR 38046 (July 20, 2001). Because of their relation to OEX options, the Exchange already deems XEO options to be subject to CBOE Rule 24.19.

<sup>8</sup> OEF options are options overlying shares of the iShares S&P 100 Index Fund, an exchange traded fund based on the S&P 100 Index. QQQ options are options overlying the Nasdaq 100 Index Tracking Stock, an exchange traded fund designed to track the performance of the Nasdaq 100 Index. CBOE has determined to treat options on exchange traded fund shares that are derived from broad-based indices like broad-based index options, and generally to apply to these products the same rules that are applicable to broad-based index options. CBOE believes that options on exchange traded fund shares derived from broad-based indices, such as OEF and QQQ options, share trading characteristics similar to broad-based index options and, therefore, the same rules should apply to both.

<sup>9</sup> CBOE states that OEF options are about 1/10th the size of OEX and XEO options.

<sup>3</sup> See Letter from Jaime Galvan, Attorney, CBOE, to Michael Gaw, Division of Market Regulation, Commission, dated October 1, 2001 ("Amendment No. 1"). In Amendment No. 1, CBOE made a minor change to the proposed rule text to clarify that the appropriate Floor Procedure Committee may determine to make only spread orders based on a combination of related broad-based index options eligible to be handled pursuant to CBOE Rule 24.19.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 38782 (June 26, 1997), 62 FR 35862 (July 2, 1997) (SR-CBOE-97-15).

Spread Order is represented at the primary trading station or concurrent with the announcement of such order, the member initiating the order must contact the Order Book Official or the DPM, as applicable, at the other trading station. This change is required due to the fact that the MNX, NDX, OEF, and QQQ trading crowds are DPM trading crowds.

As is currently the case, paragraph (b)(iii) of CBOE Rule 24.19 will provide that a member holding a Multi-Class Spread Order that is priced net in a multiple of the minimum increment will have priority over bids and offers in the trading crowd if both legs of the spread would trade at a price that is at least equivalent to quotes in the crowd. Similarly, such an order will have priority over bids and offers in the customer limit order books so long as: (1) No leg of the order would trade at a price outside the currently displayed bids or offers, or bids or offers in the customer limit order book; and (2) at least one leg of the order would trade at a price that is better than the corresponding bid or offer in one of the books.

The Exchange believes that expanding the application of CBOE Rule 24.19 to the products and spread orders listed above, so that both legs of such spread orders can be executed at the same post, will result in tighter and more competitive markets for such orders, benefiting both customers and traders.

## 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) Act<sup>10</sup> in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. CBOE believes that the proposed rule will further these statutory goals by allowing for the efficient conduct of Multi-Class Broad-Based Index Option Spread Orders that will be beneficial to both customers and traders.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

CBOE has asserted that, because the foregoing proposed rule change does not (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> In addition, CBOE gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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 provision 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 Exchange. All submissions should refer to File No. SR-CBOE-2001-53 and should be submitted by November 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44849; File No. SR-GSCC-00-10]

### **Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to the Submission of Repo Collateral Substitutions**

September 25, 2001.

On September 11, 2000, the Government Securities Clearing Corporation ("GSCC") 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> a proposed rule change (File No. GSCC-00-10) and on November 20, 2000, and August 28, 2001, amended the proposed rule change.<sup>2</sup> Notice of the proposal was published in the **Federal Register** on January 11, 2001.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### **I. Description**

The rule change enables GSCC to reduce the risk to itself and its members caused by the repurchase ("repo") collateral substitution process. Due to a variety of reasons, this process has recently stressed GSCC's and its inter-dealer broker members' operational infrastructures, and has caused undue fail-financing expenses for other members. GSCC's new rules relating to repo collateral substitutions processes and the fees associated with such substitutions will prohibit certain practices and will impose an additional

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Because the second amendment merely modified the language in GSCC's rule to better reflect what was discussed and comment requested on in the notice, notice of the amendment and comment is not required.

<sup>3</sup> Securities Exchange Act Release No. 43794 (January 3, 2001), 66 FR 2466.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).