

market, and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 provisions of 5 U.S.C. 552, will be available for inspection and copying at 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-2002-41 and should be submitted by November 22, 2002.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission believes that this proposal, which provides a further interpretation of the Exercise Right, as provided in Article Fifth (b)

and CBOE Rule 3.16(b), should clarify that the approximately 330 exerciser members of the CBOE, who became CBOT members pursuant to the CBOT's expedited membership approval procedures, will continue to be recognized by the CBOE as exerciser members in good standing of the CBOE, so long as these exerciser members would possess all trading rights and privileges appurtenant to a CBOT membership, including satisfying full CBOT membership or delegate application, examination, and approval requirements. Further, the Commission believes that the proposal also clarifies that the CBOE will reinstate as an exerciser member in good standing any CBOE exerciser member, who became a CBOT member by the CBOT's expedited membership approval procedures and who subsequently ceases to be an exerciser member in good standing for any reason but thereafter reapplies to become an exerciser member of the CBOE, pursuant to the Exercise Right within six months of the date he or she ceased to be a CBOE exerciser member.

The Commission notes that this proposed interpretation as described above by the CBOE provides a limited exception to CBOE Rule 3.16(b), which interprets Article Fifth (b) to include "Eligible CBOT Full Member[s]" and "Eligible CBOT Full Member Delegate[s]," as defined in the 1992 Agreement between the CBOE and CBOT. The Commission believes that the proposed interpretation has no investor protection implications because all CBOE members, including exerciser members, must nevertheless comply with the requirements of the Act and CBOE rules in order to utilize their trading privileges on the CBOE floor. Also, although the CBOT granted expedited approval to these 330 individuals, the CBOE conducted a full review of these 330 members before they were permitted to trade on the CBOE. In addition, the Commission believes that refusing to recognize these certain individuals as exerciser members of the CBOE in good standing unless and until they were re-approved as CBOT members under its regular membership procedures would impose significant hardship on these individuals and cause disruption to the CBOE itself. In order to avoid such harmful results, the Commission believes that the proposed interpretation described herein and the proposed rule change are appropriate, in that the CBOE is interpreting its requirements for certain CBOT members (exerciser members) to become and remain members of the CBOE. For these

reasons, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2002-41), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46727; File No. SR-CBOE-2002-44]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules To Eliminate the "Book Indicator"

October 25, 2002.

On August 19, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 rules to eliminate the "Book Indicator."<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 28, 2002.<sup>4</sup> The Commission received no comments on the proposed rule change.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and with the requirements of section 6(b).<sup>6</sup> In particular, the Commission finds the

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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>3</sup> This indicator is affixed to the CBOE disseminated quotation when an order in the Exchange's book represents the best bid or offer on the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 46397 (August 21, 2002), 67 FR 55443 (August 29, 2002).

<sup>5</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed is consistent with section 6(b)(5)<sup>7</sup> of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Book Indicator was adopted as part of the CBOE's initiative to provide split-price Retail Automatic Execution System ("RAES") executions for incoming customer orders when the prevailing best bid (offer) is generated by a existing customer order in the CBOE book.<sup>8</sup> At the time split-price execution functionality was adopted, CBOE's disseminated quote did not display size. Thus, the Book Indicator served to alert a customer that a RAES eligible order might not be executed in its entirety at CBOE's displayed price, and that he might receive a split-price execution. Now that CBOE disseminates quotes with size, the Commission believes that the Book Indicator is no longer necessary. Therefore, the Commission believes that it is appropriate for the Exchange to eliminate the Book Indicator, and remove all references to the Book Indicator from the CBOE rules. The Commission believes that the proposed rule change will streamline and clarify the Exchange rules by eliminating reference to an indicator that no longer is necessary.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2002-44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46723; File No. SR-ISE-2002-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. Relating to Quotation Size

October 25, 2002.

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 October 11, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. 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 that all ISE's quotations would be firm for all incoming orders for their full disseminated size. The ISE would retain a one-contract minimum size for quotations when they interact with quotations entered by other ISE market makers. The proposed rule change would be implemented when the Commission approves the proposal and grants the Exchange an exemption from Rule 11Ac1-1 (the "Firm Quote Rule") under the Act, and when the Exchange implements technical enhancements to its system necessary to support this change. Below is the text of the proposed rule change. Additions are italicized. Brackets indicate deletions.

\* \* \* \* \*

#### Rule 804.—Market Maker Quotations

(a) Options Classes. A quotation only may be entered by a market maker, and only in the options classes to which the market maker is appointed under Rule 802.

(b) Size Associated with Quotes. A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the market maker is willing to buy [from] or sell *(i) upon receipt of an order ("Order Execution Size") and (ii) upon interaction with a quotation entered by another market maker on the Exchange ("Quotation Execution Size")* [to (i) Public Customers (the "Public

Customer Size") and (ii) Non-Customers (the "Non-Customer Size")]. Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not initially enter an *Order Execution Size* [a bid or offer with a Public Customer] of less than ten (10) contracts. Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price. Every market maker bid or offer must have a *Quotation Execution* [a Non-Customer] Size of at least one (1) contract.

(c) Two-Sided Quotes. A market maker that enters a bid (offer) on the Exchange must enter an offer (bid) within the spread allowable under Rule 803(b)(4).

(d) Firm Quotes. (1) Market maker bids and offers are firm for *orders and Exchange market maker quotations* [Public Customer Orders and Non-Customer Orders] both under this Rule and Rule 11Ac1-1 under the Exchange Act ("Rule 11Ac1-1") for the number of contracts specified [for each] according to the requirements of paragraph (b) above. Market maker bids and offers are not firm under this Rule and Rule 11Ac1-1 if:

(i) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner;

(ii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be "fast" pursuant to Rule 704;

(iii) during trading rotations; or  
(iv) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1-1 exist.

(2) Within thirty seconds of receipt of an *order* [a Public Customer Order (Non-Customer Order)] to buy or sell an option in an amount greater than the *Order Execution Size*, or *within thirty seconds of another Exchange market maker entering a quotation at a price executable against the market maker's quotation* [Public Customer Size (Non-Customer Size)], that portion of the order equal to the *Order Execution Size*, or the *Quotation Execution Size*, as the case may be, [Public Customer Size

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.