

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47033; File No. SR-CBOE-2002-49]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES Access Rules for Broad-Based Index Options and Options on Exchange-Traded Funds on Broad-Based Indexes

December 19, 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 November 1, 2002, the Chicago Board Options Exchange, Inc. ("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 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

CBOE proposes to amend CBOE Rule 24.17 to broaden its applicability to options on broad-based indexes, including SPX, and options on exchange-traded funds ("ETFs") on broad-based indexes, and make other related changes to Exchange rules. The text of the proposed rule change is available at the 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. 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

Currently, the eligibility of CBOE market-makers to participate in trades

through the Retail Automatic Execution System ("RAES") in option classes on broad-based indexes, including OEX and SPX, as well as option classes on ETFs<sup>3</sup> on broad-based indexes (collectively, "index-related options") is governed under three different Exchange rules. CBOE Rule 8.16 governs RAES eligibility for all options classes other than DJX, OEX, and SPX. CBOE Rule 24.17 addresses RAES eligibility for market-makers in OEX and DJX. Finally, RAES eligibility in the SPX is governed by CBOE Rule 24.16, which is separate yet functionally identical to CBOE Rule 24.17.<sup>4</sup>

This proposed rule change would clarify and simplify the treatment of index-related options under CBOE rules by broadening CBOE Rule 24.17 to apply to market-makers in index-related options. The Exchange believes that this change would render CBOE Rule 24.16 duplicative and unnecessary. Therefore, the Exchange proposes to delete the current text of CBOE Rule 24.16, while reserving the rule number for possible future use.

In addition, CBOE seeks to amend the title of CBOE Rule 8.16 and certain text in subsection (a) of that rule to clarify that RAES eligibility under CBOE Rule 8.16 would apply only to option classes *other than* broad-based indexes and options on ETFs on broad-based indexes.

CBOE believes the consolidation of Exchange RAES eligibility rules for index-related options under one rule, 24.17, would provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the Exchange believes that CBOE Rule 24.17 is better suited to govern trading in index-related options than CBOE Rule 8.16, because index-related options more frequently tend to be traded in larger crowds, where more than one market-maker from a particular trading organization can often be

present. CBOE believes that the current language of CBOE Rule 24.17 better anticipates and provides for this circumstance than does CBOE Rule 8.16, by setting forth more detailed criteria for when and how market-makers can participate in RAES as joint account members and/or as nominees of member organizations.<sup>5</sup>

CBOE proposes to add to CBOE Rule 24.17 one set of provisions already present in the current CBOE Rule 8.16 in order to increase and make more consistent the enforcement of market-maker obligations in index-related options. These provisions currently exist as CBOE Rule 8.16(a)(iii) and the related Interpretations and Policies .01-.02. CBOE proposes to add the provisions to CBOE Rule 24.17(b)(vii) and Interpretations and Policies .03-.04, thereunder. These provisions would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions. The Committee would establish such limitations to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, as set forth in CBOE Rule 8.7(b)(i)-(iii),<sup>6</sup> and do not simply stand there for the purpose of accepting and scalping out of favorable RAES trades, as they sometimes can do under the current CBOE Rules 24.16 and 24.17. The Exchange believes that this change would thereby further improve the competition and liquidity in CBOE index-related options markets. The Exchange notes that the provisions it is proposing to add to CBOE Rule 24.17 are substantially the same provisions that the Commission has previously approved for CBOE Rule 8.16.<sup>7</sup>

<sup>3</sup> For purposes of this rule, trust issued receipts or holding company depositary receipts (as defined in Interpretation .04 to CBOE Rule 1.1), as well as index portfolio receipts (as defined in Interpretation .02 to CBOE Rule 1.1) and index portfolio shares (as defined in Interpretation .03 to CBOE Rule 1.1), are all included within the meaning of the term "exchange-traded fund."

<sup>4</sup> While a few subsections of CBOE Rule 24.16 are phrased somewhat differently than their counterparts in CBOE Rule 24.17, they are interpreted and applied by the CBOE as being equivalent. Compare CBOE Rules 24.16(a)(ii), (c)(i), and (d)(i) with CBOE Rules 24.17(b)(ii), (c)(i), and (d)(i) (enabling market-makers to "designate" that their RAES trades be placed into an individual, joint, or nominee account in which the market-maker participates); also compare CBOE Rule 24.16(a)(iii) with CBOE Rule 24.17(b)(ii)-(iv) (establishing requirements for personally logging onto RAES and remaining in the trading crowd while logged in.)

<sup>5</sup> Compare CBOE Rule 24.17(c)-(d) with CBOE Rule 8.16(a)(ii).

<sup>6</sup> CBOE Rule 8.7(b) provides that market-makers are expected to perform the following activities in the course of maintaining a fair and orderly market in their appointed option classes:

(i) To compete with other market-makers to improve markets in all series of options classes at the station where a market-maker is present.

(ii) To make markets which, absent changed market conditions, will be honored to a reasonable number of contracts in all series of options classes at the station where a market-maker is present.

(iii) To update market quotations in response to changed market conditions in all series of options classes at the station where a market-maker is present.

<sup>7</sup> See Exchange Act Release No. 42870 (May 31, 2000), 65 FR 37191 (June 13, 2000) (SR-CBOE-97-37).

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

<sup>2</sup> 17 CFR 240.19b-4.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>9</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest because the RAES eligibility rules would be applied consistently for similar products involving broad-based indexes and options on ETFs on broad-based indexes. In addition, CBOE believes the amended CBOE Rule 24.17 would facilitate greater enforcement of market-maker obligations to improve, update, and honor competitive markets in index-related option classes.

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

CBOE does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2002-49 and should be submitted by January 17, 2003.

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

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47034; File No. SR-CBOE-2002-70]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Day Trading Margin Requirements

December 19, 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 December 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange submitted the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-

4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 Chapter 12 of its rules ("Margins") to implement specific requirements for day trading in customer accounts of member organizations. The text of the proposed rule change follows. New rule language is italicized.

#### CHAPTER 12: Margins

Rules 12.1 and 12.2: No change.

#### Rule 12.3

(a) through (i)(3): No change.  
(i)(4) equity of at least \$2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). *The minimum equity requirement for a "pattern day trader" is \$25,000 pursuant to Rule 12.3(j)(4).*

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided the account is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of \$2,000 (\$25,000 in the case of "pattern day traders") or an amount sufficient to meet the maintenance margin requirements of this Rule.

#### Day Trading

(j)(1) The term "day trading" means the purchasing and selling, or the selling and purchasing, of the same security on the same day in a margin account except for:

(A) a long security position held overnight and sold the next day prior to any new purchases of the same security, or

(B) a short security position held overnight and purchased the next day prior to any new sales of the same security.

(2) The term "pattern day trader" means any customer who executes four (4) or more day trades within five (5) business days. However, if the number of day trades is 6% or less of total trades for the five (5) business day period, the customer will no longer be considered a

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

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

<sup>8</sup> 15 U.S.C. 78(f)(b).

<sup>9</sup> 15 U.S.C. 78(f)(b)(5).