

and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.²⁰

The Commission has carefully considered the Amex's proposal to expand the hedge exemption from position and exercise limits. Given the market neutral characteristic of all the proposed qualified hedge strategies (except covered stock positions), the Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the Exchange will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the Amex will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. Although the exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange), the exemption will remain in effect only to the extent that the

exempted position remains intact and that the Exchange is provided with any required supporting documentation.

In addition, as described above, a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts having 200 or more contracts are reported to the Exchange electronically, via the Large Options Position Report. Specialist and registered options trader account information is also reported to the Exchange electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

The Commission believes these reporting requirements will help the Amex to monitor options positions and ensure that only qualified hedges are being exempt from position and exercise limits. To the extent that any position raises concerns, the Commission believes that the Amex, through its monitoring, will be promptly notified, and the Commission would expect the Amex to take any appropriate action, as permitted by its rules.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that the proposal, as amended, is substantially identical to a proposed rule change submitted by the CBOE, which the Commission has approved.²¹ The Commission does not believe that the proposed rule changes raises novel regulatory issues that were not already addressed and should benefit Exchange members by permitting them greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,²² to approve the proposal, as amended, on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Amex-2001-

72), as amended, is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45649; File No. SR-BSE-2002-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend Its Specialist Performance Evaluation Program

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934¹ notice is hereby given that on March 20, 2002, the Boston Stock Exchange ("BSE" 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 the Exchange. 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 extend its Specialist Performance Evaluation Program until June 30, 2002. The proposed language is below. Added language is in *italics*. Deleted language is in *brackets*.

Chapter XV

Specialists

Specialist Performance Evaluation Program

Sec. 17 (a)—(e) no change.

(f) This program will expire on [March 31, 2002] *June 30, 2002*, unless further action is taken by the Exchange.

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

²¹ See Securities Exchange Act Release No. 44503 (March 20, 2002) (SR-CBOE-00-12).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

²⁰ *Id.*

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. The Exchange 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

The Exchange seeks to extend its Specialist Performance Evaluation Program ("SPEP") pilot, until June 30, 2002. Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessary because of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification of the SPEP program can be undertaken before permanent approval is requested.

2. Basis

The statutory basis for the proposed rule change is section 6(b)(5) ² of the Act in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3) ³ of the Act and paragraph (f) of Rule 19b-4 ⁴ thereunder because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange provided the Commission with 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 the filing of the proposed rule change, ⁵ or such shorter time as designated by the Commission.

At any time within 60 days of the filing of such 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 furtherance of the purposes of the Act.

The Commission designates that the proposal become operative on March 31, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes in the marketplace. ⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 Exchange. All submissions should refer to File No. SR-BSE-2002-03 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority ⁷.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45603A; File No. SR-CBOE-00-12]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Expansion of the Equity Hedge Exemption From Position and Exercise Limits

March 27, 2002.

Correction

In FR Document No. 02-07327, beginning on page 14751 for Wednesday March 27, 2002, paragraph (iv) in column 3 on page 14751, which describes the collar hedge strategy, was incorrectly stated by the Chicago Board Options Exchange ("CBOE"). ¹ The paragraph should read as follows:

(iv) Collar (sell call/buy put, neither in-the-money when established with the same expiration where the strike price of the short call equals or exceeds the

³ 15 U.S.C. 78s(b)(3).

⁴ 17 CFR 240.19b-4(f).

⁵ BSE submitted this proposed rule change on March 8, 2002. The Commission deems the initial filing to meet the notice of intent to file requirement.

⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 17 CFR 200.30-3(a)(12).

¹ Telephone conversation between Patricia L. Cerny, Director, Department of Market Regulation, CBOE, and Susie Cho, Special Counsel, Division of Market Regulation, Commission, March 26, 2002.

² 15 U.S.C. 78f(b)(5).