

other participant exchanges, including any other new participant exchange, that operates an electronic facility for the trading of options) would be permitted to access options market data on a fee-exempt basis.<sup>3</sup>

To accomplish this, OPRA is proposing to add new paragraph (vi) to Section VII(d) of the OPRA Plan that would provide an exemption from OPRA device charges for terminals used exclusively by members of participant exchanges who function as brokers or market makers on traditional exchange trading floors, or who function as specialists or other market makers on electronic exchanges or trading facilities. Although exempt from OPRA device charges, members who control data terminals located at their own places of business would be required to sign OPRA's professional subscriber agreements, which contain prohibitions on the retransmission of market data to unauthorized persons.

OPRA also proposes to add new subsection (e) to Section V of the OPRA Plan, which for the duration of the two-year pilot will codify OPRA's current practice whereby the participant exchanges themselves are entitled to access OPRA information at their own places of business without being subject to OPRA's information fees, provided that the information is used by the exchanges in connection with the operation, surveillance or regulation of their respective exchange markets. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a participant exchange.

## II. Implementation of the Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2,<sup>4</sup> OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for

<sup>3</sup> OPRA does not propose to extend this exemption to members of electronic exchanges who function as brokers but not as specialists or market makers. Unlike traditional floor-broker members, who are limited in number and represent customer orders typically received in the first instance at the members' off-floor locations where OPRA-enabled terminals are subject to OPRA fees, electronic access members may be unlimited in number, and will more likely receive orders directly from customers. In these respects, electronic access members perform a variety of functions, and they may be unlimited in number. One possible function is the direct receipt of customer orders, which is comparable to the function performed by those persons who today constitute the majority of OPRA's professional subscribers and provide the greater part of OPRA's total revenues.

<sup>4</sup> 17 CFR 240.11Aa3-2(c)(3)(i).

effectiveness upon filing. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2),<sup>5</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-00-06 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43108; File No. SR-CBOE-00-26]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Amending the Exchange's Flexible Exchange Options Rules

August 2, 2000.

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 as amended on July 27, 2000, 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 the CBOE.<sup>3</sup> 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 CBOE proposes to amend Exchange Rule 24A.4 to specifically provide for the listing and trading of Flexible Exchange options ("FLEX Option") on all of the indices, both broad-based and narrow-based indices, on which the Exchange lists and trades Non-FLEX options. The text of the proposed rule change is available at the Office of the Secretary, 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, the 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. The CBOE has prepared summaries, set for in sections

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

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

<sup>3</sup> On July 27, 2000, the CBOE filed an amendment to the proposed rule change ("Amendment No. 1"). See Letter to Heather Traeger, Attorney, Division of Market Regulation, Commission, from Jaime Galvan, Attorney, Legal Division, CBOE, dated July 26, 2000. In Amendment No. 1, the CBOE represents that when it files a proposed rule change to list a trade a new Non-FLEX index option, it will also propose to list and trade the FLEX index options in the same file.

<sup>5</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(29).

A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to specifically provide in Rule 24A.4 for the listing and trading of FLEX Options on all indices, both broad-based and narrow-based on which the Exchange lists and trades on all Non-FLEX options or warrants. On February 24, 1993, the Commission approved the Exchange's FLEX™ Options framework<sup>4</sup> and has since approved rule changes permitting the Exchange to list and trade FLEX Options based on the Russell 2000 Index, the Nasdaq<sup>®</sup> 100 Index, the S&P 100 and the S&P 500 indices, the NYSE Composite Index, the Dow Jones Industrial Average, and the Dow Jones Transportation Average. The Exchange now proposes to provide for the trading of FLEX Options on all indices traded on the CBOE.<sup>5</sup>

All of the Exchange's rules now applicable to FLEX Index Options will apply to the additional FLEX Indices. The Exchange is proposing to expand the trading of FLEX options because the Exchange believes this will provide trading opportunities which currently are not available on the CBOE. Additionally, it will increase the Exchange's competitiveness with the over-the-counter market place and other exchanges which have expanded FLEX Options trading on indices.<sup>6</sup>

The Exchange is deleting the list of index options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index that has been approved for Non-FLEX options trading or warrant trading on the Exchange. This change is consistent with Amex Rule 903G(a)(1). The Exchange is likewise deleting the list of index options set forth in Rule 24A.4(a)(2)(i). This change is consistent

<sup>4</sup> See Securities Exchange Act Release No. 31920, 58 FR 12280 (March 3, 1993).

<sup>5</sup> Rules on trading FLEX Options are set forth under CBOE Rule 24A.

<sup>6</sup> On April 28, 1998, the Commission approved the American Stock Exchange's ("Amex") proposal to list and trade Flex options on all Amex indices. See Securities and Exchange Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998). On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's ("Phlx") proposal to establish Phlx Rule 1079 providing for the trading of FLEX Options on equities and narrow-based and broad-based indices. See Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

with Amex Rule 903G(a)(2)(i) and Phlx Rule 1079(a)(1). When the CBOE files a proposed rule change to list and trade a new Non-FLEX index option product, it will also propose to list and trade the FLEX index options in the same filing.<sup>7</sup>

2. Statutory Basis

Because the proposal to expand the trading of FLEX options to all Exchange Indices will provide trading opportunities which currently are not available on the Exchange, the CBOE believes that the proposed rule change is consistent with the provision of Section 6(b) of the Securities Exchange Act of 1934,<sup>8</sup> in general, and Section 6(b)(5)<sup>9</sup> in particular, in that it is designed to facilitate transactions in securities, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

*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**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. Any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if

<sup>7</sup> The Commission notes that in any proposal to trade a new FLEX Index Option, the CBOE must propose the position and exercise limits that will apply in accordance with CBOE Rules 24A.7 and 24A.8.

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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.<sup>12</sup>

**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, N.W., Washington, D.C. 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 CBOE. All submissions should refer to SR-CBOE-00-26 and should be submitted by August 30, 2000.

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

**Jonathan G. Katz,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43107; File No. SR-NASD-00-37]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Nasdaq Application of the OptiMark System.**

August 2, 2000.

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 June 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</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.