on the CBOE as a Market-Maker (Rule 24.16(a)(iv)(B)).

The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group [3] set forth in Rule 24.16(e). Currently, Rule 24.16(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Market Performance Committee from time to time, which in no event may be set higher than thirty-three and one-third percent of the average number of RAES participants for the prior quarter. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The proposed rule change would conform Rule 24.16 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the SPX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the SPX market with enhanced capital and market-making expertise while maintaining the overall quality of the market. By increasing the number of RAES participants in SPX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [4] in that it is designed to remove impediments to a free and open 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 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**

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 self-regulatory organization 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 filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–49 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43676; File No. SR–CBOE–00–48]**

## Self-Regulatory Organizations; Notice of Filing by Chicago Board Options Exchange, Inc., Relating to RAES Eligibility Requirements for OEX and DJX Options

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2000, 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 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 Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') proposes to amend Rule 24.17, which governs the eligibility requirements of Market-Makers to participate on the Exchange's Retail Automatic Execution System (''RAES'') in both options on the Standard & Poor's 100 Index (''OEX'') and options on the Dow Jones Industrial Average (''DJX'').

The text of the proposed rule change is available at CBOE and 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 forth in sections A, B, and C below of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*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 amend Rule 24.17, ''RAES Eligibility in OEX and DJX,'' to: (1) eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17; (2) eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group; and (3) add an exception to the log-off requirements of OEX and DJX Market-Makers. The proposed rule changes will make the RAES eligibility requirements of OEX and DJX Market-Makers the same as for other Market-Makers in non-index option classes and will enhance the depth and liquidity of the RAES markets in OEX and DJX.

Currently, Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he or she can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Another requirement is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in the option class in which the Market-Maker is participating on RAES in person. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17, so that the RAES eligibility requirements of OEX and DJX Market-Makers are the same as for other Market-Makers.

Recently, Market-Maker participation on RAES in index options has been low compared to historical levels. This problem has been aggravated by the fact that the in-person and volume requirements have forced the Exchange to delay new Market-Makers who wish to participate on RAES from logging onto RAES for at least 30 days. The proposed rule change would allow a new Market-Maker to log onto RAES so long as that Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program (Rule 24.17(b)(i)); (2) has been approved under Exchange Rules as a Market-Maker with a letter of guarantee (Rule 24.17(b)(v)(A)); and (3) maintains his or her principal business on the CBOE as a Market-Maker (Rule 24.17(b)(v)(B)).

Accordingly, the Exchange proposes to also eliminate subparagraph (b)(vi)(C) to Rule 24.17, which allows a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month by meeting the individual in person and volume requirements with respect to OEX, with respect to DJX, or the volume requirement with respect to OEX and DJX combined and the in person requirement with respect to OEX or DJX. Under the proposed rule change, a Market-Maker will be able to participate in RAES in both OEX and DJX during the same calendar month as long as he or she meets the remaining criteria under subparagraph (b)(v) to Rule 24.17 and as long as the two products continue to be traded at the same physical trading location. A Market-Maker must be present in the particular trading crowd where the class is traded while he or she is participating in RAES for that class. The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group [3] set forth in Rule 24.17(e). Currently, Rule 24.17(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Committee from time to time, which in no event may be set higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The Exchange further proposes to add to Rule 24.17 an exception to the log-off requirement that provides that a Market-Maker who has logged onto RAES in OEX or DJX must log off RAES whenever he or she leaves the respective trading crowd. The exception would allow OEX and DJX Market-Makers to remain logged onto RAES if the Market-Maker's departure from the trading crowd is for a ''brief interval.'' This exception is currently found in the SPX RAES eligibility rule, Rule 24.16, and the RAES eligibility rule for equity options, Rule 8.16.[4] The Exchange believes that OEX and DJX RAES Market-Makers should also have the benefit of this exception applicable to SPX and equity options Market-Makers. The appropriate Committee, as defined in Rule 24.17, would have the authority to determine the length of time that constitutes a brief interval in the OEX and DJX trading crowds.

The proposed rule change would conform Rule 24.17 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the OEX and DJX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the OEX and DJX markets with enhanced capital and market-making expertise while maintaining the overall quality of these markets. By increasing the number of RAES participants in OEX and DJX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [5] in that it is designed to remove impediments to a free and open 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 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**

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 self-regulatory organization consents, the Commission will:

[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] A ''brief interval'' in SPX options has been determined by the appropriate Committee to mean no more than 10 to 15 minutes. In equity options, a brief interval has been determined by the appropriate Committee to mean 5 minutes or less.

[5] 15 U.S.C. 78f(b)(5).

(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 filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–48 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31801 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43688; File No. SR–ISE–00–24]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to a Marketing Fee To Fund Payment for Order Flow

December 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a new marketing fee to fund a payment for order flow program. This will be an interim fee, pending both approval of the Exchange's permanent payment for order flow program (''Permanent Program'') and the establishment of fees under that program.[3] The fee will be $.75 a contract on all Primary Market Maker (''PMM'') and Competitive Market Maker executions against customer orders. This fee will terminate at the earlier of January 15, 2001, or the effectiveness of a fee to fund the Permanent Program.

### 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, 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 purpose of the proposed rule change is to provide a source of funding for a payment for order flow program. This will be an interim program expiring on the earlier of January 15, 2001, or Commission approval of the Permanent Program and the establishment of a fee to fund that Program.

[3] On September 12, 2000, the Exchange filed with the Commission a rule change proposing to establish the Permanent Program. *See* Securities Exchange Act Release No. 43462 (October 19, 2000), 65 FR 64466 (October 27, 2000). By the terms of that proposal, the Exchange would be required to submit a separate rule change filing pursuant to Section 19(b)(3)(A) of the Act each time it sets the specific amount of any fees authorized under the program.

The Exchange will segregate the funds the fees generate proportionately to the groups of securities (or ''bins'') that generated the funds. The PMM in each bin will have full and exclusive discretion on how to use those funds to pay for order flow. The Exchange will make the payments to Electronic Access Members based on the PMM's directives.

The Exchange will be issuing appropriate circulars to its members emphasizing their disclosure and best execution obligations. The Exchange also will be providing to members various reports and other information demonstrating the quality of executions that they receive on the Exchange.

2. Statutory Basis

The Exchange states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The Exchanges believes that the proposed rule change does not impose 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the 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,

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).