

permitting the entry of multiple orders from the account or accounts of the same beneficial owner within a 15-second period, in lieu of a presumption regarding the unbundling of such orders, will add certainty and consistency to the enforcement of the Rule and provide Order Entry Firms with clarity as to what conduct violates the Rule. The Commission therefore finds that acceleration of Amendments No. 1 and 2 is appropriate.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-CBOE-00-47), and Amendments No. 1 and 2 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44121; File No. SR-CBOE-00-48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to RAES Eligibility Requirements for OEX and DJX Options

March 27, 2001.

I. Introduction

On September 20, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to amend CBOE Rule 24.17, which governs the eligibility of Market-Makers to participate on the Exchange's Retail Automatic Execution System ("RAES") in options on the Standard & Poor's 100 Index ("OEX") and on the Dow Jones Industrial Average ("DJX").

The proposed rule change was published for comment in the **Federal**

Register on December 14, 2000.³ On January 31, 2001, the Exchange filed Amendment No. 1 to the proposal.⁴ No comments were received on the proposal. This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 24.17

(b) Individuals.

(iv) An individual member who is logged onto RAES must log off the system whenever he leaves the trading crowd, *unless the departure is for a brief interval.*

(v) RAES participation in the Option Class is limited to Market-Makers in that Option Class. To qualify, a Market-Maker must:

(A) be approved under Exchange rules as a Market-Maker with a letter of guarantee, and,

(B) maintain his principal business on the CBOE as a Market-Maker.[.]

[(C) execute at least seventy five percent of his Market Maker contracts for the preceding calendar month in that Option Class, and

(D) execute at least seventy five percent of his Market Maker trades for the preceding calendar month in that Option Class in person.

In making these calculations, RAES trades will not be considered.]

(vi) A Market-Maker may be eligible to participate in RAES in OEX and DJX during the same calendar month as long as:

(A) OEX and DJX are trading in the same physical trading structure on the floor of the Exchange, and

(B) that Market-Maker satisfies the requirements of sub-paragraphs (b)(v)(A) and (b)(v)(B). [., and]

[(C) that Market Maker meets one of the following three criteria: (1) The Market Maker satisfies the requirements of (b)(v)(C) and (b)(v)(D) with respect to OEX; (2) the Market Maker satisfies the requirements of (b)(v)(C) and (b)(v)(D) with respect to DJX; or (3) the Market Maker satisfies the requirements of (b)(v)(C) with respect to contracts in OEX and DJX combined and (b)(v)(D) with respect to his Market Maker trades in either OEX or DJX.]

A Market-Maker must be present in the particular trading crowd where the class is traded while he is participating in RAES for that class.

(c) Joint Accounts.

(iii) Members of the joint account that are not present in the trading crowd for the

³ Securities Exchange Act Release No. 43676 (December 5, 2000), 65 FR 78231.

⁴ See letter from Jamie Galvin, Attorney, Legal Division, CBOE, to Steven Johnston, Special Counsel, Division of Market Regulation, Commission, dated January 31, 2001. Amendment No. 1 proposes an exception to a requirement that Market-Makers remain logged onto RAES ("Amendment No. 1").

Option Class may not be logged onto RAES. Any member of the joint account that has been logged onto RAES must log off the system whenever he leaves the trading crowd for the Option Class *for other than a brief interval.* Once a member of a joint account has been logged onto RAES for that Option Class at any time during an expiration cycle, each member of that account must be logged onto RAES for that Option Class at any time that he enters the trading crowd for that Option Class from the date of the initial log on through the business day immediately preceding expiration.

(e) Authority to Disapprove

(i) No person or entity may participate directly or indirectly in RAES, or share in the profits, directly or indirectly, with more than one RAES group. [., which may not exceed the maximum number of RAES participants set by the appropriate Committee from time to time. In no event may the appropriate Committee set a maximum number higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The appropriate Committee will give groups one month notice if a reduction in group size becomes necessary due to application of the this size limit. The appropriate Committee reserves the authority to establish lower limits on the size of groups eligible to use RAES. Such limits may be imposed by the Committee at any time.]

(ii) The appropriate Committee [also] retains the right to disallow any group from participating in RAES where it appears to the Committee that such group:

(A) has "purchased" RAES rights from members of the group;

(B) does not afford each group participant a reasonable participation in profits and losses (as a guideline: no RAES participant may receive a flat fee, and a minimum participation level of any group member is ¼ of an equal distribution to all group members, with responsibility for losses equivalent to share of profits);⁴

(C) is managed by a person who is not a member of the group; or

(D) is managed by a person who has a financial interest in another group.

(f) Authority to Require RAES Participation

(i) Notwithstanding the limitations in paragraph (b)(v)(C) and (D)] and paragraph (b)(vi), if there appears to be inadequate RAES participation in the Option Class, the chairperson of the appropriate Committee, or a designee thereof, in consultation with a senior Exchange executive officer, may require Market-Makers who are members of the trading crowd, as defined in Rule 8.50 to log on to RAES absent reasonable justification or excuse for non-participation. If there continues to be inadequate RAES participation, the chairperson of the appropriate Committee or a designee, in consultation with a senior Exchange executive officer, may request participation of all Market-Makers whether or not they are members of the Option Class crowd.

* * * * *

II. Description of the Proposal

Currently, Rule 24.17(b)(v) sets forth four eligibility requirements that must

¹⁷ *Id.*

¹⁸ 17 CFR 200.30-3(a)(12).

¹⁹ 15 U.S.C. 78s(b)(1).

²⁰ 17 CFR 240.19b-4.

be met by a Market-Maker before he or she can participate on RAES in either OEX or DJX options. The CBOE proposal would eliminate two of the current four Market-Maker eligibility requirements. 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 in person 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. 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 those for Market-Makers trading in non-index options.⁵

The Exchange represents that recently, Market-Maker participation on RAES in index options has been low compared to historical levels. The Exchange believes that this is a problem that has been aggravated by the fact that the in-person and volume requirements in essence require the Exchange to have new Market-Makers desiring to participate on RAES wait for at least 30 days before logging onto RAES. The proposed rule change would permit a new Market-Maker to log onto RAES if the Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program;⁶ (2) has been approved under Exchange rule as a Market-Maker with a letter of guarantee;⁷ and (3) is maintaining his or her principal business on the CBOE as Market-Maker.⁸

Also, the Exchange proposes to eliminate certain requirements that Market-Makers currently must meet to participate in both OEX and DJX options during the same calendar month. Rule 24.17(b)(vi)(C) requires that, before participating in both OEX and DJX options during the same month, a

Market-Maker must meet: (1) The in-person and volume requirements with respect to OEX; (2) the in-person and volume requirements with respect to DJX; or (3) the volume requirement with respect to OEX and DJX combined, as well as the in-person requirement with respect to OEX or DJX. The Exchange proposal would eliminate Rule 24.17(b)(vi)(C). Under the proposed rule change, a Market-Maker would be eligible to participate in OEX and DJX during the same calendar month as long as: (1) OEX and DJX options continue to be traded at the same physical trading locations;⁹ and (2) the Market-Maker meets the criteria under 24.17(b)(v)(A) and 24.17(b)(v)(B).¹⁰

The Exchange also proposes to eliminate the cap, set forth in Rule 24.17(e)(i), on the number of Market-Makers that may participate in a RAES group. Rule 24.17(e)(i) provides that a RAES group may not exceed the lesser of (1) 50 RAES participants; (2) 25 percent of the average number of RAES participants for the prior quarter, or (3) a smaller maximum number set by "the appropriate Committee"¹¹ According to the CBOE, a recent decline in RAES participation in index options has, by operation of Rule 24.17(e)(i), resulted in reductions, as compared to historical levels, in the size of RAES groups. The reductions have taken place because Rule 24.17(e)(i) currently ties maximum RAES group size to the level of RAES participation.¹²

The Exchange further proposes to add to Rule 24.17 an exception to the requirement that a Market-Maker who has logged onto RAES in OEX or DJX must log 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 were for a "brief interval." The proposed exception mirrors one in current Rule 24.16,¹³ which governs eligibility requirements for the Standard & Poor's 500 Index ("SPX"), and in rule 8.16,¹⁴ the

eligibility rule for equity options.¹⁵ The Exchange believes that OEX and DJX RAES Market-Makers should have the benefit of an exception that currently applies to SPX and equity options Market-Makers. "The appropriate Committee" would have authority to determine the length of time that constitutes a "brief interval" for the OEX and DJX trading crowds. Finally, Amendment No. 1 proposes to revise Rule 24.17(c)(iii) to require members of a joint account¹⁶ who have been logged onto RAES to log off the system whenever they leave the trading crowd for other than a brief interval. The proposed revision would make the language of proposed Rule 24.17(c)(iii) identical to the language of Rule 24.16(c)(iii).¹⁷

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act¹⁸ and the rules and regulations promulgated thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,¹⁹ which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

The CBOE proposal would amend Rule 24.17 to eliminate what the CBOE represents are several disincentives to Market-Maker participation in OEX and DJX trades. The Commission finds that removal of in-person volume quotas, elimination of the cap on the number of Market-Makers that may participate in OEX and DJX trades, and the inclusion of an exception to log-on requirements, are appropriate measures to reduce disincentives. In addition, the Commission recognizes the importance of encouraging Market-Maker participation to ensure adequate liquidity, particularly where participation levels are low.

The Commission finds good cause for approving Amendment No. 1 to the

⁹ CBOE Rule 24.17(b)(vi)(A).

¹⁰ CBOE Rule 24.17(b)(vi)(B).

¹¹ CBOE Rule 24.17(a)(iii) defines "the appropriate Committee" as "the Exchange Committee to which the Exchange delegates the market performance function for options on the S&P 100 in the case of OEX and on the DJIA in the case of DJX."

¹² Conversation between Jamie Galvin, Attorney, Legal Division, CBOE, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, February 28, 2001 (clarifying operation of current CBOE Rule 24.17(e)).

¹³ CBOE Rule 24.16(c)(iii).

¹⁴ CBOE Rule 8.16(a)(iii).

¹⁵ 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.

¹⁶ A member of a joint account is either: (1) A Market-Maker having an appointment under CBOE Rule 8.7(b); or (2) a clearing member which carries the joint account. CBOE Rule 8.9, Interpretation .01.

¹⁷ Amendment No. 1.

¹⁸ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78f(b)(5).

⁵ The remaining two eligibility provisions for the Market-Makers desiring to trade in OEX and DJX options would continue to require Market-Makers to be approved under Exchange rules and to maintain their principal places of business on the CBOE as Market-Makers. CBOE Rule 24.17(b)(v)(B); CBOE Rule 24.17(b)(v)(C).

⁶ CBOE Rule 24.17(b)(i).

⁷ CBOE Rule 24.17(b)(v)(A).

⁸ CBOE Rule 24.17(b)(v)(B).

CBOE proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By extending to members of joint accounts the "brief interval" exception to the RAES log-on requirement, Amendment No. 1 provides for more consistent application of that exception. Therefore, the Commission finds good cause for accelerating approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether it 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 Section. Copies of Amendment No. 1 to the proposed rule change will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. CBOE-00-48 and should be submitted by April 26, 2001.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposal (SR-CBOE-00-48) be and hereby is, approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44134; File No. SR-CBOE-01-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Regarding the Duration of Equity Linked Term Notes

March 29, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2001, 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 Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.³ 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 its listing standards relating to the durational requirements of Equity Linked Term Notes ("ELNs"). 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 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b(f)(6).

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

1. Purpose

On September 30, 1994, the Commission approved listing criteria for Equity Linked Term Notes trading on the Exchange.⁴ ELNs are intermediate-term, hybrid instruments whose value is linked to the performance of a highly-capitalized, actively traded common stock, not-convertible preferred stock, or sponsored American Depositary Receipt ("ADR"). CBOE Rule 31.5(I) establishes the listing criteria for ELNs. Among these criteria, 31.5(I)(a) requires that ELNs have a term of two to seven years, but no more than three years, if the issuer is a non-U.S. company. The Exchange initially adopted this term minimum to help ensure that the trading of ELNs did not have an adverse effect on the liquidity of the underlying stock and were not used in a manipulative manner.

Since the Exchange began listing ELNs for trading, the possible adverse effects set forth above have not manifested themselves. In fact, the Exchange believes that ELNs may complement the trading of the underlying stocks and the continued popularity of ELNs amply demonstrates their appeal in the market. Accordingly, the Exchange proposes to amend Rule 31.5(I)(a) to reduce the minimum term requirement of ELNs from two years to one year and to eliminate the maximum term requirement of three years for when the issuer is a non-U.S. company.⁵

The Exchange believes that the proposed changes to the term requirements will provide issuers with more flexibility in developing ELNs and thus provide greater investment choices in the market. In this respect, the Exchange notes that many corporate debt instruments have terms in excess of seven years, and that this rule change will allow the structuring of ELNs with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELNs will provide issuers with the ability to offer variations on ELNs, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an

⁴ Securities Exchange Act Release No. 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (approving SR-CBOE-94-04).

⁵ The Exchange notes that it will provide the Commission with advance notice if it intends to list ELNs linked to a non-U.S. security and the issue has a duration of more than three years.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).