

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44256A; File No. SR-Amex-2001-24]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Independent Director and Audit Committee Requirements**

May 23, 2001.

**Correction**

In FR Document 01-11801 beginning on page 23955 for Thursday, May 10, 2001, the date for File No. SR-2001-24 should read May 4, 2001.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 01-13474 Filed 5-29-01; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44337; File No. SR-Amex-2001-15]

**Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Its Annual Electronic Access Fee**

May 22, 2001.

On March 9, 2001, the American Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> the proposed rule change to (i) amend Article VII of the Exchange Constitution by deleting the requirement that the annual electronic access fee be fixed by the Board of Governors based on a given formula; and (ii) set the year 2001 electronic access fee at \$61,363.00.

The proposed rule change was published for comment in the **Federal Register** on April 16, 2001.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the

requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>6</sup> because it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-Amex-2001-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 01-13531 Filed 5-29-01; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44335; File No. SR-CBOE-2001-26]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Four Month Extension of the Pilot Program To Eliminate Position and Exercise Limits for FLEX Equity Options**

May 22, 2001.

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 May 21, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under Rule 19-4(f)(6).<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>1</sup> 15 U.S.C. 78f.

<sup>2</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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

The Exchange seeks a four month extension of the pilot program that provides for the elimination of position and exercise limits for S&P 100 Index ("OEX"), S&P 500 Index ("SPX"), and Dow Jones Industrial Average ("DJX") index options as well as for FLEX options overlying these indexes. 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 Exchange has prepared summaries, set forth in sections 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

On January 22, 1999, the Commission approved a two-year pilot program ("Pilot Program") that allowed for the elimination of position and exercise limits for options on the SPX, OEX, and DJX as well as for FLEX options overlying these indexes.<sup>4</sup> By order dated January 30, 2001, the Commission extended the Pilot Program until May 22, 2001.<sup>5</sup> The purpose of this proposed rule change is to request a four-month extension of the Pilot Program until September 22, 2001 to allow the Commission additional time to consider the Exchange's separate application for permanent approval of the Pilot Program.<sup>6</sup>

The Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program so that the Commission could use this information to evaluate any consequences of the program and to

<sup>4</sup> See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 49111 (February 1, 1999) (approving SR-CBOE-99-23). ("Approval Order")

<sup>5</sup> See Securities Exchange Act Release No. 43867 (January 22, 2001), 66 FR 8250 (January 30, 2001) (approving SR-CBOE-01-01).

<sup>6</sup> By separate filing (SR-CBOE-2001-22), CBOE requests permanent approval of the Pilot Program.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44166 (April 6, 2001), 66 FR 19591.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the

determine whether to approve the elimination of position and exercise limits for these products on a permanent basis.<sup>7</sup> The CBOE submitted the required report to the Commission on December 21, 2000.<sup>8</sup> The report indicates that during the review period, CBOE did not discover any instances where an account maintained an unusually large unhedged position. The data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged, although to different degrees. Most important, CBOE's analysis did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program. For this reason, the Exchange believes that its experience with the Pilot Program has been positive. Accordingly, CBOE requests that the effectiveness of the Pilot Program be extended four months.

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b)<sup>9</sup> of the Act in general and in particular with Section 6(b)(5)<sup>10</sup> in particular in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by allowing for the extension of a Pilot Program that has enabled more business to be transacted on the exchanges that might otherwise have been transacted in the over the counter ("OTC") market without the benefit of Exchange transparency and the guarantee of The Options Clearing Corporation. The Exchange also believes that the proposed rule change is consistent with section 11A of the Act<sup>11</sup> in that it will enhance competition by allowing the Exchange to compete better with the

OTC market in options and with entities not subject to position limit rules.

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

The Exchange represents that the proposed rule change will impose no 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

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 rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder<sup>13</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 the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.<sup>14</sup>

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 Exchange has requested that the rule change be accelerated to become operative on May 22, 2001, because such action will allow the Exchange to continue the Pilot Program without interruption while the Commission determines whether to approve the Pilot Program on a permanent basis. The Commission finds that accelerating the operative date of the rule change to prevent interruption of the Pilot Program while the Commission considers the permanent approval request is consistent with the protection

of investors and the public interest, and thus designates May 22, 2001 as the operative date of the filing.<sup>15</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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-2001-26 and should be submitted by June 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>7</sup> In the Approval Order, the Commission stated: "CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop."

<sup>8</sup> Letter from Patricia L. Cerny, Director, Office of Trading Practices, CBOE, to Elizabeth King, Division of Market Regulation, SEC, dated December 21, 2000.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78k-1.

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

<sup>13</sup> 17 CFR 240.19b-4(f)(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).

<sup>14</sup> The Commission has determined to waive the requirement the CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>15</sup> The Commission requests that the CBOE update the Commission on any problems that have developed with the pilot since the last extension, including any compliance issues, and whether there have been any large unhedged positions that have raised concerns for the CBOE. In addition, the Commission reiterates the expectation that the CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. See note 7, *supra*.

<sup>16</sup> 17 CFR 200.30-3(a)(12).