

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 the Amex. All submissions should refer to file number SR-BSE-2001-04 and should be submitted by September 4, 2001.

#### IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The BSE has asked the Commission to approve the proposal on an accelerated basis to ease the financial burden on member firms subject to the \$1,000,000 capital requirement for PDRs.

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. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. As discussed more fully above, the BSE established the current \$1,000,000 capital requirement for PDRs during the initial period of trading ETFs on the BSE, when ETFs were a relatively new and untested financial instrument. The BSE established the \$1,000,000 capital requirement due to the possible volatility of ETFs and the unknown risks that they might have posed to the BSE.

Since the initial period of trading PDRs on the BSE, the BSE states that it has determined that ETFs do not pose undue financial exposure risk to the BSE. In addition, the BSE states that an internal analysis performed by the

Exchange indicated that specialists' trading of ETFs and listed equity products pose commensurate risks to the BSE. The Exchange states that it has carefully evaluated volume and price measures for PDRs that BSE specialists trade actively and that the proposed equity requirement will continue to ensure that BSE specialists have sufficient resources to perform their market making obligations effectively.<sup>10</sup> The BSE believes that neither the volume nor the price of PDRs necessitates an equity requirement in excess of \$200,000 of PDRs and that the proposal will make the capital requirement for PDRs more commensurate with the exposure to risk.<sup>11</sup>

The Commission believes that the proposed \$200,000 capital requirement for PDRs should help to ensure that BSE specialist continue to have adequate capital to conduct their market making activities. Accordingly, the Commission believes that it is not inconsistent with the Act for the BSE to reduce the specialist capital requirement for trading PDRs from \$1,000,000 to \$200,000. However, the Commission expects, and the BSE has agreed, that if there is a significant increase in the trading volume of PDRs, the BSE will reconsider the adequacy of its reduced capital requirement and, if appropriate, submit to the Commission a proposal to increase the capital requirement for specialists trading PDRs.<sup>12</sup>

The Commission believes that it is reasonable for the BSE to eliminate Interpretation and Policy .03 because Interpretation and Policy .01, as amended, will make Interpretation and Policy .03 unnecessary.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal will reduce the financial burden on BSE specialists trading PDRs and facilitate the efficient allocation of market making capital. Amendment No. 1 strengthens the BSE's proposal by representing that BSE specialists trading PDRs will continue to have sufficient resources to fulfill their market making obligations under the reduced capital requirement. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>13</sup> to approve the proposal and

Amendment No. 1 to the proposal on an accelerated basis.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BSE-2001-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44654; File No. SR-CBOE-2001-42]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees

August 3, 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 July 23, 2001, 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. 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 its fee schedule to waive all public customer fees related to options on the Standard & Poor's 100 European-style index ("XEO").<sup>3</sup>

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

217 CFR 240.19b-4.

<sup>3</sup> The listing of XEO options on the CBOE became effective pursuant to File No. SR-CBOE-2001-39. See Securities Exchange Release No. 44556 (July 16, 2001), 66 FR 38046 (July 20, 2001) (notice of filing and immediate effectiveness of File No. SR-CBOE-2001-39).

<sup>9</sup> 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> See Amendment No. 1, *supra* note 3.

<sup>11</sup> See August 6 Conversation, *supra* note 3.

<sup>12</sup> See August 6 Conversation, *supra* note 3.

<sup>13</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

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

The purpose of the proposed rule change is to waive all public customer fees for XEO through October 31, 2001.<sup>4</sup> These fee waivers will be in effect beginning with the launch of trading in XEO on July 23, 2001.

Specifically, the Exchange proposes to waive the transaction fee, trade match fee, floor brokerage fee, and Retail Automatic Execution Systems ("RAES") fee for public customer XEO orders. The Exchange has decided to waive these fees through October 31, 2001, to promote the launch of the XEO product. The Exchange believes these fee waivers will serve to make XEO competitive with competing products at other exchanges while generating significant saving for its customers.<sup>5</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

<sup>4</sup> These public customer fees are fees assessed on CBOE members relating to public customer XEO orders executed by CBOE members. Telephone conversation between Chris Hill, Attorney II, CBOE, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on July 30, 2001.

<sup>5</sup> The Commission notes that this fee waiver is similar to that granted for reduced-value Nasdaq 100 Index ("NMX") options. Securities Exchange Act Release No. 43221 (August 29, 2000), 65 FR 54333 (notice of filing and immediate effectiveness of File No. SR-CBOE-00-39).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(2).

*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**

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder.

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.

**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 the CBOE. All submissions should refer to File No. SR-CBOE-2001-42 and should be submitted by September 4, 2001.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44659; File No. SR-ISE-2001-18]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to Priority Principles on Complex Orders**

August 6, 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 25, 2001, the International Securities Exchange LLC ("ISE" 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 ISE. On July 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 24, 2001, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On August 2, 2001, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>10</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.

<sup>3</sup> Amendment No. 1 expanded upon the discussion contained in the purpose section of the filing, corrected various typographical errors, and added a one-year sunset to the proposed rule that the Exchange inadvertently omitted in its original filing. See letter from Jennifer M. Lamie, Assistant General Counsel, ISE to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 10, 2001.

<sup>4</sup> Amendment No. 2 made a technical change to the text of the one-year sunset provision of the proposed rule change. See letter from Jennifer M. Lamie, Assistant General Counsel, ISE to Nancy Sanow, Assistant Director, Division, Commission, dated July 23, 2001.

<sup>5</sup> In Amendment No. 3, the Exchange added text to the proposed rules relating to stock-option orders, and the effect of price increments on order priority. The Exchange also amended the purpose section of the filing by adding a further description of the operation of the proposed allocation procedures. See letter from Jennifer M. Lamie, Assistant General Counsel, ISE to Nancy Sanow, Assistant Director, Division, Commission, dated August 2, 2001.