

the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a national securities exchange.

4. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

5. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Index Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

6. The prospectus and annual report for each Index Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the Index Fund's prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Underlying Index.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45384; File No. SR-OPRA-2001-03]

### Options Price Reporting Authority; Order Approving Amendment to OPRA Plan to Exclude Foreign Currency Options from the Calculation of Capacity Allocation Provided for in the OPRA Plan

February 1, 2002.

#### I. Introduction

On December 10, 2001, Options Price Reporting Authority ("OPRA"),<sup>1</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would exclude foreign currency options ("FCOs") from the calculation of capacity allocation provided for in the OPRA Plan.

The proposed amendment was published for comment in the **Federal Register** on January 4, 2002.<sup>3</sup> No comments were received on the proposal. In this order, the Commission is approving the proposed amendment.

#### II. Description of the Proposal

OPRA proposes to revise certain provisions of Section III, "Definitions" and Section V(d), "Quarterly Calculation of Capacity Allocation" in order to exclude FCOs from the calculation of system capacity allocation that is provided for in the OPRA Plan and make available exclusively for the processing and dissemination of FCO market data a fixed amount of system capacity as determined by OPRA from time to time. The proposed amendment

<sup>1</sup> OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 11Aa3-2 thereunder, 17 CFR 240.11Aa3-2. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc., is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange, Inc. in 1997. See Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> Securities Exchange Act Release No. 45207 (December 28, 2001), 67 FR 619.

provides that the capacity available for FCO market data will be capable of handling at least 350 messages per second ("mps"), the amount currently assigned by OPRA to FCO market data. OPRA represents that such capacity is sufficient to meet the anticipated needs of the FCO market. OPRA represents that the proposed amendment would make no substantive change to the provisions of the OPRA Plan.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>4</sup> Specifically, the Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act<sup>5</sup> and Rule 11Aa3-2<sup>6</sup> thereunder in that it is 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.

The Commission notes that the capacity available for FCO market data should be capable of handling at least 350 mps, which is the amount currently assigned by OPRA to FCO market data. OPRA has represented that such capacity is sufficient to meet the anticipated needs of the FCO market. The Commission also notes that OPRA has been advised by its Processor that exclusive of capacity set aside for the FCO market, the remaining capacity of the OPRA System is capable of handling at least 24,000 mps to process and disseminate market data for stock and index options. OPRA represents that this amount of system capacity is more than enough to fulfill OPRA's needs until the next planned increase in total capacity. Based on OPRA's representations, the Commission believes that it is reasonable for OPRA to exclude FCOs from the calculation of system capacity allocation and to separately determine a fixed amount of capacity for FCO market data. Accordingly, the Commission finds that the proposal is consistent with the Act.<sup>7</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Rule 11Aa3-2 under the Act,<sup>8</sup> that the

<sup>4</sup> In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 240.11Aa3-2.

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 17 CFR 240.11Aa3-2.

proposed amendment (SR-OPRA-2001-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45389; File No. SR-CBOE-00-40]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to SPX Combination Orders

February 4, 2002.

#### I. Introduction

On August 17, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change 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 CBOE amended its proposal on August 16, 2001,<sup>3</sup> September 27, 2001,<sup>4</sup> November 14, 2001,<sup>5</sup> and January 11,

2002.<sup>6</sup> As discussed more fully below, the proposal, as amended, will allow a member holding an "SPX Combo Order"<sup>7</sup> to execute and print the SPX Combo Order at the prices originally quoted within two hours after the time of the original quotes, provided that the prices originally quoted satisfy the requirements of CBOE Rule 24.20(b)(1).<sup>8</sup>

The proposed rule change was published for comment in the **Federal Register** on October 24, 2000.<sup>9</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment Nos. 1, 2, 3, and 4 to the proposal.

#### II. Description of the Proposal

##### A. Revised Text of CBOE Rule 24.20

In Amendment Nos. 1, 2, 3, and 4, the CBOE proposes the following amendments to the text of proposed CBOE Rule 24.20, as published in the October Release. Additions are italicized and deletions are in [brackets].

##### SPX Combination Orders

Rule 24.20 (a) For purposes of this rule, the following terms shall have the following meanings:

CBOE Rule 24.20(b)(1) to provide that when a member holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total net debit or credit has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes in the crowd, the order may be executed at the best net debit or credit so long as: (1) no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids of offers in the SPX limit order book; and (2) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.

<sup>6</sup> See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated January 10, 2002 ("Amendment No. 4"). Amendment No. 4 revises the text of proposed CBOE Rule 24.20(a) to: (1) define an "SPX combination" as a long SPX call and a short SPX put having the same expiration date and strike price; (2) define "delta" as the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position; and (3) indicate that an "SPX Combo Order" is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

<sup>7</sup> The proposal defines an "SPX Combo Order" as an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta. See Amendment No. 4, *supra* note 6.

<sup>8</sup> Telephone conversation between Jaime Galvan, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 28, 2001.

<sup>9</sup> See Securities Exchange Act Release No. 43452 (October 17, 2000), 65 FR 63658 ("October Release").

(1) An "SPX combination" is [an order combining] a long SPX call and a short SPX put [of the same series, or an order combining a short SPX call and a long SPX put of the same series] *having the same expiration date and strike price.*

(2) A "delta" is the *positive (negative) number of SPX combinations that must be sold (bought) [required] to establish a [delta] market neutral hedge with an SPX option position[, based on the value of the underlying S&P 500 futures contract].*

(3) An "SPX Combo Order" is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

(b) [Notwithstanding any other rules of the Exchange, orders for SPX options executed in conjunction with SPX combination orders] *An SPX Combo Order may be transacted in the following manner:*

(i)1) *When [A] a member holding an [order(s) to purchase or sell SPX options must indicate the delta of the option and] SPX Combo Order [must] and bidding or offering [for each option and each of the legs of a combination order(s)] in a multiple of the minimum increment on the basis of [the] a total debit or credit for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed on the SPX limit order book or by the displayed quotes of the crowd, then the order may be executed at the best net debit or credit so long as [At the time they are originally quoted, the prices quoted for the options and each leg of the combination order(s) must be such that none] (A) no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX [customer] limit order book and (B) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.*

(iii)2) [The option order(s) and each leg of the combination order(s) may be executed immediately or at any time during the trading day. If the orders are not executed immediately, the option order(s) and each leg of the combination order(s) may be printed at their originally quoted prices in order to achieve the total debit or credit agreed to for the entire transaction.] *Notwithstanding any other rules of the Exchange, if an SPX Combo Order is not executed immediately, the SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within 2*

<sup>9</sup> 17 CFR 200.30-3(a)(29).

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

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

<sup>3</sup> See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation ("Division"), Commission, dated August 14, 2001 ("Amendment No. 1").

Amendment No. 1 revises the text of CBOE Rule 24.20, "SPX Combination Orders," to define the term "SPX Combo Order" and to indicate that, as long as the conditions in CBOE Rule 24.20 are satisfied, an SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within two hours after the time of original quotes, rather than at any time during the trading day, as the proposal had originally provided. Amendment No. 1 also provides additional information concerning the need for the proposed rule.

<sup>4</sup> See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated September 26, 2001 ("Amendment No. 2"). Amendment No. 2 revises the text of CBOE Rule 24.20 to make the numbering of paragraph 24.20(b) consistent with the numbering of paragraph 24.20(a) and to indicate that SPX Combo Orders may be executed and printed at the originally quoted prices, rather than printed and executed at the originally quoted prices.

<sup>5</sup> See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated November 13, 2001 ("Amendment No. 3"). Amendment No. 3 revises