

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 Exchange seeks to extend its Specialist Performance Evaluation Program ("SPEP") pilot, until June 30, 2002. Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessary because of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification of the SPEP program can be undertaken before permanent approval is requested.

2. Basis

The statutory basis for the proposed rule change is section 6(b)(5)<sup>2</sup> of the Act in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on 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 upon filing pursuant to section 19(b)(3)<sup>3</sup> of the Act and paragraph (f) of Rule 19b-4<sup>4</sup> thereunder because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change,<sup>5</sup> or such shorter time as designated by the Commission.

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 Commission designates that the proposal become operative on March 31, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes in the marketplace.<sup>6</sup>

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making

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

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

<sup>5</sup> BSE submitted this proposed rule change on March 8, 2002. The Commission deems the initial filing to meet the notice of intent to file requirement.

<sup>6</sup> 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).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2002-03 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority<sup>7</sup>.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45603A; File No. SR-CBOE-00-12]

**Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Expansion of the Equity Hedge Exemption From Position and Exercise Limits**

March 27, 2002.

**Correction**

In FR Document No. 02-07327, beginning on page 14751 for Wednesday March 27, 2002, paragraph (iv) in column 3 on page 14751, which describes the collar hedge strategy, was incorrectly stated by the Chicago Board Options Exchange ("CBOE").<sup>1</sup> The paragraph should read as follows:

(iv) Collar (sell call/buy put, neither in-the-money when established with the same expiration where the strike price of the short call equals or exceeds the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Telephone conversation between Patricia L. Cerny, Director, Department of Market Regulation, CBOE, and Susie Cho, Special Counsel, Division of Market Regulation, Commission, March 26, 2002.

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

strike price of the long put/buy stock).<sup>2</sup> A collar strategy provides downside protection by the use of put option contracts and finances the purchase of the puts through the sale of short call option contracts. The goal of this strategy is to bracket the price of the underlying security at the time the position is established. For example, assume that the price of an underlying equity, XYZ, is \$53 and account ABC is long 5000 shares of XYZ at \$53. Account ABC sells 50 XYZ April 55 calls and purchases 50 XYZ April 50 puts. Under the collar exemption, one collar (*i.e.*, one short call, and one long put) must be hedged with 100 shares of the underlying security to remain exempt.

Additionally, neither side of the short call, long put position can be in-the-money at the time the position is established.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45633; File No. SR-CBOE-2002-09]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders for Appointed Market-Makers in Index FLEX Options

March 22, 2002.

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 February 19, 2002, 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 Exchange. On March 18, 2002, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend CBOE Rule 24A.5 relating to allocation of orders for Appointed Market Makers in Index Flex Options ("AMMs").

Below is the text of the proposed rule change. Deleted language is in brackets. Proposed new language is *italicized*.

\* \* \* \* \*

#### Chicago Board Options Exchange, Inc.

##### Rules

##### CHAPTER XXIVA

##### Flexible Exchange Options

\* \* \* \* \*

##### FLEX Trading Procedures and Principles

\* \* \* \* \*

##### Rule 24A.5

\* \* \* \* \*

(e) Priority of Bids and Offers. (no change)

(i) Bids. (no change)

(ii) Offers. (no change)

(iii) Notwithstanding the foregoing subparagraphs (i) and (ii) of this paragraph (e), whenever the Submitting Member has indicated an intention to cross or act as principal on the trade and has matched or improved the BBO during the BBO Improvement Interval, the following priority principles will apply:

(A) (no change)

(B) In the case of Index FLEX Options, where the Submitting Member has matched the BBO or in the event the Submitting Member has improved the BBO and any other FLEX participating member matched the improved BBO, the Submitting Member will have priority to execute the contra side of the trade that is the subject of the Request for Quotes, but only to the extent of the largest of [25%] 20% of the trade, a proportional share of the trade, \$1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value on a closing transaction valued at less than \$1 million.

(iv) *Notwithstanding subparagraphs (i), (ii) and (iii), subject to the review of the Board of Directors, the appropriate Floor Procedure Committee may establish from time to time a participation entitlement formula that is applicable to all FLEX Appointed Market-Makers.*

\* \* \* \* \*

The CBOE has also submitted as part of its proposed rule change the draft text of a proposed Regulatory Circular that would establish a participation entitlement formula pursuant to the above proposed CBOE Rule 24A.5(e)(iv) and would further describe its application, as discussed in Section II.A. below. The text of this proposed Regulatory Circular is available at the 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 aspects of such statements.

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

###### 1. Purpose

CBOE is submitting the proposed change to amend CBOE Rule 24A.5 pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,<sup>4</sup> which requires that respondent options exchanges adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement \* \* \* the allocation of orders in that option class." The proposed rule change addresses the allocation of orders for FLEX Index Options.

The proposed rule change would add CBOE Rule 24A.5(e)(iv), which would permit the appropriate Floor Procedure Committee to establish a participation entitlement formula that is applicable to all AMMs in FLEX Index Options. In addition, the proposed rule change would amend the participation entitlement of the Submitting Member<sup>5</sup> by deleting "25%" in CBOE Rule

<sup>4</sup> Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

<sup>5</sup> A "Submitting Member" is defined in CBOE Rule 24A.1(q) as an Exchange member that initiates FLEX bidding and offering by submitting a FLEX Request for Quotes.

<sup>2</sup> *Id.*

<sup>3</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> See letter from Jaime Galvan, Attorney, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 15, 2002 ("Amendment No. 1"). The changes made by Amendment No. 1 have been incorporated into this notice.