

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. 34-45837; File No. SR-CBOE-2002-20]

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

April 26, 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 April 23, 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 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 Exchange proposes to amend CBOE Rule 6.7A to prohibit members from initiating certain types of legal proceedings against the Exchange or its contractors. The text of the proposed rule change is provided below. Text that has been added to the current Exchange rule is in italics.

Rule 6.7A *Legal Proceedings Against the Exchange and its Directors, Officers, Employees, Contractors or Agents*

No member or person associated with a member shall institute a lawsuit or other legal proceeding against *the Exchange* or any director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exists. This provision shall not

apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.

#### 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 CBOE 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.

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

###### 1. Purpose

Currently, CBOE Rule 6.7A prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any officer, director, employee, agent or other official of the Exchange or any of its subsidiaries based on action taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. CBOE Rule 6.7A does not prevent a legal proceeding based on violation of the federal securities laws where a private right of action for such violation otherwise exists, nor does it prevent appeals of Exchange actions as provided for in the Rules of the Exchange.<sup>3</sup>

The purpose of the proposed rule change is to amend CBOE Rule 6.7A to also prohibit a member or associated person from instituting a lawsuit or any other type of legal proceeding against the Exchange or its contractors. According to the CBOE, the proposed change to CBOE Rule 6.7A would not impair a member's ability to initiate legal action against the Exchange or its contractors based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, or other actions by the CBOE as provided for in the Exchange's rules. The Exchange believes that the proposed rule change would make CBOE Rule 6.7A consistent with the International Securities Exchange's Rule 705(c).

###### 2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, because by precluding certain types of legal actions by members against the Exchange and its contractors, it will further reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and protecting investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder,<sup>7</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 filing, or such shorter time that 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 at least five business days prior to the filing date.

At any time within 60 days of the filing of the 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 the furtherance of the purposes of the Act.<sup>8</sup>

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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

<sup>14</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> The Commission approved CBOE Rule 6.7A on July 11, 1996. See Securities Exchange Act Release No. 37421, 61 FR 37513 (July 18, 1996).

#### 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-2002-20 and should be submitted by May 23, 2002.

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

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*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45823; File No. SR-ISE-2001-32]

#### Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to a Pilot Program To Increase the Minimum Quote Size for Certain Option Classes

April 25, 2002.

On November 16, 2001, the International Securities Exchange LLC ("ISE" or "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> a proposed rule change to adopt a three-month pilot program establishing greater size requirements

for certain quotations in specified options. The ISE amended its proposal on February 13, 2002<sup>3</sup> and on March 13, 2002.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 22, 2002.<sup>5</sup> The Commission received no comments on the proposal, as amended.

The Commission finds that the proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>6</sup> and in particular, the requirements of Section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to adopt a three-month pilot program in which ISE market makers would be required to establish and maintain quotations of a larger minimum size in a limited number of option classes is consistent with section 6(b)(5) of the Act<sup>8</sup> because it is designed to promote just and equitable principals 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.

The Commission notes that the increased minimum size for quotes for PMMs would be 100 contracts for customers and 50 contracts for broker-dealers.<sup>9</sup> For Competitive Market

<sup>3</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the ISE proposed to replace the original rule filing in its entirety and specified the options to be included in the pilot program rather than allowing Primary Market Makers ("PMMs") to choose the options to be included in the pilot.

<sup>4</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 12, 2002 ("Amendment No. 2"). In Amendment No. 2, the ISE proposed to clarify that, in the pilot program, new enhanced size levels would apply to customer and broker-dealer orders, but not to the orders of market makers on either the ISE or other exchanges.

<sup>5</sup> See Securities Exchange Act Release No. 45568 (March 15, 2002), 67 FR 13388.

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> This enhanced quotation size requirement will not affect the PMM's obligation under ISE Rule 803(c)(1) to disseminate a quotation of at least ten

Makers, the size requirements would be half of the PMM requirement: 50 contracts for customers and 25 contracts for broker-dealers. However, the enhanced broker-dealer size would not apply to executions against other market makers, where the minimum size would continue to be one contract.

Furthermore, these enhanced size requirements would apply only to the options series in the three months closest to expiration, and the pilot would not apply to "deep-in-the-money" options<sup>10</sup> or an option in the last three days of that option's trading.

The Commission believes that the larger size requirements may help the Exchange attract more order flow. In addition, the Commission believes that limiting the pilot program to the specified options should permit the Exchange to monitor the effects of the proposal on the quality of the ISE's market before implementing the proposal across the Exchange. In this regard, the Commission notes that the included options represent 19 of the 22 options with the highest trading volume in the industry, and thus, may be the most liquid options. The Commission also believes that limiting the program to the specified options on a three-month pilot basis should minimize any potential adverse effects of the proposal. The Commission expects the ISE, and the Exchange represents that it intends, to monitor the effects of the pilot program closely.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act<sup>11</sup>, that the proposed rule change and Amendment Nos. 1 and 2 (File No. SR-ISE-2001-32) be, and it hereby is, approved, as a pilot program, to expire on July 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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contracts when the quotation consists, in part, of a customer order for less than ten contracts.

<sup>10</sup> The proposed rule change defined "deep-in-the-money" as all options with strike prices that are in the money by four or more pricing intervals in relation to the at-the-money strike price.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

<sup>9</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.