

agencies and uses the information filed pursuant to Rule 17a-22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aids the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a-22 generally are registered clearing agencies.<sup>2</sup> The frequency of filings made by clearing agencies pursuant to Rule 17a-22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a-22 to all registered clearing agencies is approximately \$5,220. This represents one dollar per filing in postage, or a total of \$3,600. The remaining \$1,620 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is \$1.45 per page representing \$1.00 per page in postage plus \$0.45 for printing, envelopes, and other administrative expenses.)

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate

Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 16, 2002.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45945; File No. SR-CBOE-2002-25]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Allow for \$0.50 Strike Price Intervals for Options Based on Certain Exchange-Traded Funds

May 16, 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 May 8, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted Amendment No. 1 to the proposed rule change on May 15, 2002.<sup>3</sup> The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

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

<sup>3</sup> In Amendment No. 1, the Exchange represents that CBOE has the necessary systems capacity to support any additional series of options that may be added pursuant to the proposed rule change. The Exchange also attached a letter from the Options Price Reporting Authority ("OPRA"), in which OPRA represents that OPRA has the capacity to support any additional series of options that may be added pursuant to the proposed rule change. See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated May 14, 2002 ("Amendment No. 1").

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). In its filing, the CBOE requested that the Commission waive the rule's requirements of a five-day pre-filing notice and a 30-day operative delay.

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

The CBOE proposes to amend its rules to allow for \$0.50 strike price intervals for options based on certain exchange-traded funds. The text of the proposed rule change follows. Proposed new language is italicized.

#### Rule 5.5. Series of Option Contracts Open for Trading

(a)-(c) No change.

\* \* \* Interpretations and Policies:

.01 The interval between strike prices of series of options on individual stocks will be:

(a) \$2.50 or greater where the strike price is \$25.00 or less; less, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is \$200.00 or less;

(b) \$5.00 or greater where the strike price is greater than \$25.00, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is more than \$200.00;

(c) \$10.00 or greater where the strike price is greater than \$200.00;

.02-.05 No change.

.06 Notwithstanding Interpretation and Policy .01 above, the interval between strike prices may be \$0.50 or greater for options based on IPSs that correspond generally to the price and yield performance of <sup>1</sup>/<sub>10</sub>th the value of the S&P 100 Index, and for options based on a security that represents an interest in a registered investment company that corresponds generally to the price and yield performance of <sup>1</sup>/<sub>100</sub>th the value of the Dow Jones Industrial Average.

### 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 aspects of such statements.

<sup>2</sup> Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a-22.

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

1. Purpose

The Exchange proposes to establish \$0.50 strike price intervals for options based on DIAMONDS®, an exchange-traded fund that represents ownership in a unit investment trust established to hold a portfolio of stocks replicating the Dow Jones Industrial Average. DIAMONDS® currently trade on several national securities exchanges. The Exchange intends to list options on DIAMONDS® pursuant to existing listing standards set forth in CBOE Rule 5.3, Interpretation and Policy .06.

The Exchange believes that it is appropriate to amend CBOE Rule 5.5 (Series of Option Contracts Open for Trading) to provide that options on DIAMONDS® be set to \$0.50 or greater strike price intervals. These ½ point increments are needed to correspond to CBOE Rule 24.9, Interpretation and Policy .01(b) which provides that DJX index options (index options based on 1/100th of the value of the Dow Jones Industrial Average) may trade in strike intervals as narrow as \$0.50. Because DJX and DIAMONDS® are both based on 1/100th of the value of the Dow Jones Industrial Average, the significant difference between DJX and options on DIAMONDS® will be that DJX options are cash-settled and DIAMONDS® options will be physically-settled. CBOE is listing options on DIAMONDS® recognizing that customers may prefer one settlement type over the other, but providing customers such an alternative would not be meaningful if the two products could not trade in the same strike price intervals. Thus, CBOE believes that to effectively compliment CBOE's DJX index option product and to help ensure efficient trading of options on the DIAMONDS®, adopting \$0.50 strike price intervals for DIAMONDS® options is necessary.

CBOE notes that the Commission has previously approved a similar rule change filing adopting \$0.50 strike price intervals for options on the iShares S&P 100 Index Fund (ticker symbol OEF).<sup>6</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, because it

will permit trading in options based on DIAMONDS® pursuant to strike intervals designed to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional product.

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

The 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 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**

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the Exchange has 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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b-4(f)(6)(iii).<sup>12</sup> The Commission has determined to make the proposed rule

change operative as of the date of this notice.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally requires that a self-regulatory organization give the Commission 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 filing of the proposed rule change. However, Rule 19b-4(f)(iii)<sup>15</sup> permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change.<sup>16</sup> The Commission has determined to waive the five-business-day pre-filing requirement with respect to this proposal.

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 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, as amended, 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 Number SR-CBOE-2002-25 and should be submitted by June 14, 2002.

<sup>13</sup> For purposes of accelerating the implementation of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. <sup>15</sup> U.S.C. 78c(f).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See *supra* note 4.

<sup>6</sup> See Securities Exchange Act Release No. 41995 (February 15, 2001), 66 FR 11341 (February 23, 2001).

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12987 Filed 5-23-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45957; File No. SR-NASD-2002-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Continuous Operation of the Nasdaq National Market System During Market Hours

May 17, 2002.

Pursuant to section 19(b)(1) of the Act,<sup>1</sup> notice is hereby given that on February 14, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") 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 Nasdaq. Nasdaq filed Amendment No. 1 on May 17, 2002.<sup>2</sup> 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 proposed rule change will allow the continued operation of the National Market Execution System ("NNMS" or "SuperSoes") so as to trade through the inside quotations of market participants that are inaccessible through the SuperSoes system. Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

4710. Participant Obligations in NNMS (a) through (b)(9)

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after

which such orders will be rejected and returned to their respective order entry firms.]

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

In July of 2001, Nasdaq implemented SuperSoes, which provides for automatic execution against most market participant quotes in Nasdaq National Market Securities. While a great improvement over the order-delivery environment prevalent in Nasdaq before its adoption, the current operation and functionality of SuperSoes can, in a specific instance, inappropriately inhibit the smooth functioning of the Nasdaq market. This occurs when non-SuperSoes, and thus non-auto-executable, Electronic Communications Networks ("ECNs") that link to the market via Nasdaq's SelectNet order-delivery system are alone in posting the best price to buy or sell a particular security. SuperSoes will automatically execute only at the best-displayed bid or offer. If an ECN is alone in displaying either the best price to buy or sell a particular security, all SuperSoes orders entered into the system on the opposite side of the market where the ECN's best price remains alone are held by the SuperSoes system for up to 90 seconds, or until the ECN moves its quote, or until a market participant accessible via SuperSoes also moves to the inside price. During the period an ECN remains alone at the best price, the SuperSoes system, in effect, shuts down. The suspension of the SuperSoes system's operation in this circumstance prevents other market participants from automatically accessing liquidity at and near the inside and significantly degrades market quality and functionality for the overwhelming majority of Nasdaq market participants, including public investors. These negative impacts are borne out by a recent analysis by

Nasdaq's Economic Research Department of execution times in the SuperSoes system. That analysis is summarized below.

First, the analysis indicates approximately 42% of total SuperSoes orders are significantly slowed down (taking over 1/2 second to execute) because an ECN that does not accept automatic execution is alone at the inside.<sup>3</sup> In Nasdaq 100 securities, approximately 47% of SuperSoes orders are similarly delayed. The sheer length of these delays is also troublesome, with the average execution time of SuperSoes orders in Nasdaq 100 securities when an ECN is alone at the inside taking over 5 times as long (1.03 seconds) to execute, than when an auto-ex participant is at the inside and the SuperSoes system operates without restriction (0.19 seconds).

These delays are also related to just how often SuperSoes is prevented from performing at all. In Nasdaq 100 stocks, ECNs that do not take automatic execution are alone at either the bid or offer an average 70% of the time (for the median stock, 75% of the time). This means that Nasdaq's SuperSoes system is not processing normally on either the bid or offer side of market the majority of the time in one or more of Nasdaq's most active securities.

Not surprisingly, these delays also have a material impact on the execution that a party entering a SuperSoes order can expect. Nasdaq's analysis indicates that a party entering an order into SuperSoes when an ECN is alone at the inside has just a 33% chance that its order will be executed in full. When SuperSoes has an auto-ex participant at the inside, the system continues to operate, and the chance of getting an order executed in full rises dramatically to over 70%. In short, Nasdaq's analysis shows that the continuous shutting down of Nasdaq's primary execution facility has dramatic detrimental consequences for the investing public.

In response, Nasdaq has determined to modify the operation of SuperSoes as it relates to the processing of orders where an ECN is alone at the best price. In short, SuperSoes will be modified so as to not automatically shut down when an ECN is alone at the inside. Market participants will be able, consistent with ongoing best execution obligations, to continue to send market orders, or marketable limit orders, to SuperSoes

<sup>3</sup> A portion of this delay is also attributable to processing queues in the SuperSoes system itself. It is Nasdaq's view that many of these queues form as the direct result of orders not being allowed to execute automatically because SuperSoes suspends operation when an ECN that does not take automatic execution is alone at the inside.

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

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

<sup>2</sup> See Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (May 17, 2002).