*General Services Administration*

Senior Advisor to the Regional Administrator, Great Lakes Region. Effective May 10, 2002.

Chief Technology Officer to the Associate Administrator for Communications. Effective May 30, 2002.

*Office of Management and Budget*

Public Affairs Specialist to the Associate Director for Communications. Effective May 10, 2002.

Deputy General Counsel to the General Counsel. Effective May 30, 2002.

*Office of Personnel Management*

Coordinator, Public Liaison and Constituent Services to the Director, Office of Communications. Effective May 2, 2002.

Deputy Director, Office of Communications to the Director, Office of Communications. Effective May 17, 2002.

Confidential Assistant/Scheduler to the Chief of Staff. Effective May 23, 2002.

*Office of Science and Technology Policy*

Executive Director, President's Council of Advisors on Science and Technology and Counsel to the Director, Office of Science and Technology Policy. Effective May 9, 2002.

*Securities and Exchange Commission*

Director of Legislative Affairs to the Director of Communications. Effective May 24, 2002.

*Small Business Administration*

Staff Assistant to the Administrator, Small Business Administration. Effective May 8, 2002.

Regional Administrator to the Administrator, Region IV, Atlanta, Georgia. Effective May 31, 2002.

*Social Security Administration*

Special Assistant to the Deputy Commissioner for Legislation and Congressional Affairs. Effective May 15, 2002.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16468 Filed 6–28–02; 8:45 am]

**BILLING CODE 6325–38–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25640; 812–11986]**

## Eaton Vance Income Fund of Boston, et al.; Notice of Application

June 26, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Eaton Vance Income Fund of Boston, Eaton Vance Senior Income Trust, Eaton Vance Advisers Senior Floating Rate Fund, Eaton Vance Prime Rate Reserves, EV Classic Senior Floating-Rate Fund, Eaton Vance Institutional Senior Floating-Rate Fund, Eaton Vance Growth Trust, Eaton Vance Investment Trust, Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II, Eaton Vance Mutual Funds Trust, Eaton Vance Series Trust, Eaton Vance Special Investment Trust, Eaton Vance Variable Trust, Asian Small Companies Portfolio, Growth Portfolio, Greater China Growth Portfolio, Information Age Portfolio, Worldwide Health Sciences Portfolio, California Limited Maturity Municipals Portfolio, Florida Limited Maturity Municipals Portfolio, Massachusetts Limited Maturity Municipals Portfolio, National Limited Maturity Municipals Portfolio, New Jersey Limited Maturity Municipals Portfolio, New York Limited Maturity Municipals Portfolio, Ohio Limited Maturity Municipals Portfolio, Pennsylvania Limited Maturity Municipals Portfolio, Alabama Municipals Portfolio, Arizona Municipals Portfolio, Arkansas Municipals Portfolio, California Municipals Portfolio, Colorado Municipals Portfolio, Connecticut Municipals Portfolio, Florida Municipals Portfolio, Georgia Municipals Portfolio, Kentucky Municipals Portfolio, Louisiana Municipals Portfolio, Maryland Municipals Portfolio, Massachusetts Municipals Portfolio, Michigan Municipals Portfolio, Minnesota Municipals Portfolio, Mississippi Municipals Portfolio, Missouri Municipals Portfolio, National Municipals Portfolio, New Jersey Municipals Portfolio, New York Municipals Portfolio, North Carolina Municipals Portfolio, Ohio Municipals Portfolio, Oregon Municipals Portfolio, Pennsylvania Municipals Portfolio, Rhode Island Municipals Portfolio, South Carolina Municipals Portfolio, Tennessee Municipals Portfolio, Virginia Municipals Portfolio, West Virginia Municipals Portfolio, Florida Insured Municipals Portfolio, Hawaii Municipals Portfolio, High Yield Municipals Portfolio, Kansas Municipals Portfolio, Cash Management Portfolio, Government Obligations Portfolio, High Income Portfolio, Tax-Managed Growth Portfolio, Strategic Income Portfolio, Emerging Markets Portfolio, South Asia Portfolio, Growth & Income Portfolio, Special Equities Portfolio, Utilities Portfolio, Senior Debt Portfolio, Floating Rate Portfolio, Tax-Managed Emerging Growth Portfolio, Tax-Managed International Growth Portfolio, Tax-Managed Value Portfolio, Boston Income Portfolio, Capital Appreciation Portfolio, Investment Grade Income Portfolio, Small-Cap Portfolio, Large-Cap Growth Portfolio, Small Company Growth Portfolio, Tax-Managed Mid-Cap Stock Portfolio, Tax-Managed Small-Cap Value Portfolio, Capital Growth Portfolio, Small Cap Value Portfolio, Tax-Managed Mid-Cap Core Portfolio, U.S. Core Growth Portfolio, Investor Portfolio, or series thereof (collectively, the ''Eaton Vance Funds''), Eaton Vance Management, Lloyd George Investment Management (Bermuda) Limited, Lloyd George Management (Hong Kong) Limited, and Boston Management & Research, and any entity controlling, controlled by, or under common control with Eaton Vance Management (collectively, the ''Adviser''), and any other registered management investment company that is part of the same group of investment companies as the Eaton Vance Funds that is advised by the Adviser, now or in the future (together with the Eaton Vance Funds, the ''Funds'').[1]

**FILING DATES:** The application was filed on February 18, 2000, and amended on June 24, 2002.

[1] All investment companies that currently intend to rely on the order are named as applicants. Any other existing or future Fund that will rely on the order will comply with the terms and conditions of the application.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, 225 State Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

**Applicants' Representations**

1. Each Eaton Vance Fund, except Eaton Vance Senior Income Trust and Senior Debt Portfolio, is registered under the Act as an open-end management investment company (''Open-End Funds''). Eaton Vance Senior Income Trust and Senior Debt Portfolio are registered under the Act as closed-end management investment companies (''Closed-End Funds''). Each Eaton Vance Fund is organized as a Massachusetts or a New York business trust. Each Eaton Vance Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments. Other Funds may borrow money from banks for temporary purposes to satisfy redemption requests, cover unanticipated cash shortfalls such as a ''trade fail'' in which cash payment for a security sold by a Fund has been delayed, or to cover cash short falls resulting from delays in trade settlement. Currently, the Funds have credit arrangements with their custodian (i.e., overdraft protection), as well as committed lines of credit with a bank syndicate for temporary cash needs.

3. If the Funds were to borrow money under their current arrangements or under other credit arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money directly to and borrow money directly from each other through a credit facility for temporary purposes (''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Open-End Funds' potential borrowing costs and enhance the Funds' ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Open-End Funds' need to borrow from banks, the Funds would retain committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodian. Applicants state that Closed-End Funds will participate in the credit facility exclusively as lenders.

5. Applicants anticipate that the credit facility would provide a borrowing Open-End Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Open-End Funds liquidate portfolio securities to meet redemption requests, which normally are effected within one to three days, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions, sales fails and delayed settlements, under the proposed credit facility a borrowing Open-End Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term reserves or repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate'', each as defined below. The Repo Rate for any day would be the highest rate available from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Cash Management Team (defined below) each day an Interfund Loan is made according to a formula established by the Fund's Board of Trustees (the ''Board'') designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan

Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The credit facility would be administered by money market investment professionals employed by the Global Treasury Group at Investors Bank & Trust Company (''IBT'') and supervised by members of the Funds'' treasurer's office (collectively, the ''Cash Management Team''). IBT also serves as custodian for each Fund. Under the proposed credit facility, the portfolio managers for each participating Fund may provide standing instructions to participate daily as a borrower or lender. The Cash Management Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Cash Management Team has allocated cash for Interfund Loans, the Adviser will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds. Money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board including a majority of trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. Through information provided by IBT, the Adviser would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. The Adviser would supervise the credit facility as part of its duties under existing advisory contracts with each Fund and would receive no additional fee as compensation for its services. IBT would administer the day-to-day operations of the credit facility and receive no additional compensation for its services. IBT may collect standard pricing, recordkeeping, bookkeeping and accounting fees applicable to lending transactions, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank transactions.

13. Applicants state that IBT will be performing a ministerial role under the daily supervision of the Adviser. Applicants further state that in conjunction with establishment of the credit facility, IBT will also provide certain cash management services and instruments to address liquidity needs the Funds may encounter from time to time. Applicants state that cash management services provided by IBT will only be employed after any interfund lending needs have been satisfied. Applicants believe that any financial benefits received by IBT for its provision of the cash management alternatives to the Funds will be quantifiable and transparent both to the Adviser and to the Boards. The Adviser will provide information on any such financial benefits received by IBT to the Boards in connection with their annual review of the Funds' participation in the credit facility. Applicants represent that IBT will administer the credit facility solely in the best interests of the Funds.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment polices and limitations. The registration of each Fund discloses the individual borrowing and lending limitations of the Fund. Each Fund will notify shareholders of its intended participation in the proposed credit facility prior to relying upon any relief granted pursuant to the application. The statement of additional information of each Open-End Fund will disclose all material facts about the Fund's intended participation in the credit facility.

15. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

**Applicants' Legal Analysis**

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having a common investment adviser and by having a common Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with potential adverse interests to and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the

investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) the Adviser supervises the program as a disinterested fiduciary; (ii) IBT administers the program as a disinterested service provider; (iii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (iv) the Interfund Loans would not involve a greater risk than other similar investments; (v) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (vi) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for purposes of sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that neither the Adviser nor IBT would receive any additional compensation for their services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Open-End Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day the Cash Management Team will compare the Repo Rate with the Bank Loan Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (iv) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit

facility only on a secured basis. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to a Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Unless the Fund has a policy that prevents it from borrowing for other than temporary or emergency purposes, the Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to that Fund, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest any amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Boards of the Funds concerning their participation in the credit facility and the terms and conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees, (i) will review, no less frequently than quarterly, the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions, (ii) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula, and (iii) will review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by Conditions 13 and 14.

17. The Adviser will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Adviser will report on the operations of the credit facility at the Board's quarterly meetings. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (i) That the Interfund Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements as set forth in this application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (v) that the interest rate on any Interfund Loan does not exceed the interest rate on any third

[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each party.

party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, each Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless the Fund has fully disclosed in its registration statement all material facts about its intended participation.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–16659 Filed 7–1–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46113; File No. SR–CBOE–2002–35]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Rule 6.8 To Permit the Exchange To Allow Broker-Dealer Orders To Be Executed on RAES for Any Product Within Index Floor Procedure Committee's Jurisdiction

June 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2002, 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 has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to permit the Exchange to allow broker-dealer orders to be executed on the Retail Automatic Execution System (''RAES'') for any product within Index Floor Procedure Committee's jurisdiction. The text of the proposed rule change 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, 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. CBOE 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, Proposed Rule Change*

1. Purpose

The proposed rule change broadens the recent amendment to CBOE Rule 6.8.01, which granted the Index Floor Procedure Committee, on a pilot basis, the authority to allow broker-dealer orders for options on Nasdaq-100 Index'' Tracking Stock (''QQQ'') to be executed on RAES.[4] The proposed rule change would broaden the products that would be eligible to participate in the pilot to any series of any products within the scope of responsibilities of the Index Floor Procedure Committee, pursuant to the Board approved charter for that Committee.[5] In addition, the proposed rule change would give the Exchange the discretion to determine in which series broker-dealer orders could be executed on RAES.[6] All other aspects of Interpretation and Policy .01 remain unchanged.

For competitive reasons, CBOE believes that it is appropriate to expand the products available under the pilot program to those products that are under the jurisdiction of the Index Floor Procedure Committee. CBOE believes that the expansion of products in the pilot program will give the Exchange a fuller and richer data set to evaluate when it considers whether the pilot program has been effective and whether it has achieved its anticipated purpose.

CBOE believes that giving the Exchange the discretion to add permitted products to the pilot program will enhance the Exchange's ability to administer and evaluate the pilot program. Currently, only one type of product participates in the pilot program, but due to the potential increase in the number of products that may participate in the pilot program under the proposed rule change, CBOE believes the discretion to permit broker-dealer orders on RAES should operate differently.[7] The Exchange believes this is appropriate so that new products will be added to the pilot program in a manner that will optimize the evaluation of the pilot program. Since the evaluation and conclusions of the pilot program could have a broader impact than just on those products that are under the jurisdiction of the Index Floor Procedure Committee, CBOE believes that it is appropriate for the Exchange to have the discretion to determine which products within the jurisdiction of the Index Floor Procedure Committee should be added to the pilot program and when they should be added.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest. CBOE believes, that like the recently amended Interpretation and Policy .01 to CBOE Rule 6.8, the proposed rule change could enhance competition for the automatic execution of broker-dealer orders in a broader range of products. CBOE also believes that the expansion of the products eligible for the pilot program will give the Exchange a better array of information to evaluate the appropriateness of competing for orders

[4] *See* Securities Exchange Act Release No. 45967 (May 30, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22).

[5] The CBOE represents that RAES has sufficient capacity to handle the processing of the potential increased order flow.

[6] Under the current rule, it is the Index Floor Procedure Committee that has the discretion to permit broker-dealer orders for options on QQQ to be executed on RAES. The Exchange discretion would be limited to any series of any products that are within the jurisdiction of the Index Floor Procedure Committee.

[7] New products will be added to the pilot program upon the recommendation of the Index Floor Procedure Committee.

[8] 15 U.S.C. 78f(b)(5).