

programs, and development and implementation of new procedures. USEC also wishes to postpone the exercise until after the Security Order requirements are implemented because the exercise will then provide a better indication of preparedness under the new requirements.

Environmental Impacts of the Proposed Action

The proposed action would not materially affect the emergency response capabilities of the PGDP facility. The last EP exercise was conducted on September 21, 2000, and there were no issues identified which required immediate corrective action. One weakness identified concerned the failure of staff critiques to identify all areas of exercise weaknesses. This weakness has been addressed by USEC by communicating this finding to exercise participants and monitoring subsequent critiques for adequacy. NRC reviews and inspections since the 2000 exercise have not identified a decline in the effectiveness of USEC's emergency response capability. The postponement should have no impact on the effectiveness of USEC's emergency response capability. To assure Commission staff receive practice needed to assure Commission readiness to cope with an emergency at the GDPs or other fuel cycle facilities, the Commission is requiring USEC to conduct the exercise no earlier than July 15, 2003, and no later than August 15, 2003. To assure that off-site responders are prepared, the Commission is requiring USEC to offer and conduct training for off-site responders to familiarize them with the new security requirements before the exercise is conducted.

Because temperatures in July and August can be very high, and the temperatures in the cascade buildings and in other plant facilities can be extraordinarily high in those months, there is risk of significant heat stress to exercise participants required to wear substantial protective gear for anti-contamination, fire protection, or security purposes. To avoid significant risk of heat stress during the exercise, the Commission will allow USEC to not require that response personnel involved in the exercise wear the full complement of protective gear where heat stress would be a likely result.

The proposed action will not increase the probability or consequences of plant accidents, no changes are being made in the amounts or types of any effluents that could be released off-site, and there is no increase in individual or cumulative radiation exposure.

Accordingly, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in environmental impacts and would result in hardship to USEC and others by potentially delaying the implementation of the requirements in the Commission's Security Order issued June 17, 2002. The environmental impacts of the proposed action and the alternative action are otherwise similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources beyond those already necessary to conduct the EP exercise during 2002, and would merely delay the exercise.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with: (1) State of Illinois official Thomas Ortoger, Director, Illinois Department of Nuclear Safety; (2) State of Kentucky official Janice H. Jasper, Radiation Health and Toxic Agents Branch, Cabinet for Health Services; and (3) U.S. Department of Energy official Randall M. DeVault, Group Leader, Transition and Technology Group, Office of Nuclear Fuel Security and Uranium Technology, regarding the environmental impact of the proposed action. No objections were received.

Consultations with the U.S. Fish and Wildlife Service and the State Historic Preservation Officer were not performed because of the lack of any conceivable impact to fish and wildlife or historic assets.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

This document was prepared by Dan E. Martin, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. Mr. Martin is the Project Manager for the Paducah Gaseous Diffusion Plant.

For further details with respect to the proposed action, see the USEC letter request dated August 28, 2002, available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>.

Dated at Rockville, Maryland this 10th day of October, 2002.

For the Nuclear Regulatory Commission

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46651; File No. SR-BSE-2002-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to an Extension of a Temporary Exemption Concerning an Interpretation of its Execution Guarantee Rule

October 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to extend a temporary exemption related to an interpretation of its Execution Guarantee Rule in response to Commission action regarding *de minimis* trades through of certain Exchange Traded Funds ("ETFs") in the Intermarket Trading System ("ITS").

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

The purpose of the proposed rule change is to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules. This rule proposal is in response to a Commission order issued August 28, 2002, granting a *de minimis* exemption for transactions in certain Exchange Traded Funds from the Trade-Through Provisions of the ITS Plan ("Order").³ As of the implementation date of the Order, September 4, 2002, certain executions that take place according to the Rules of the Exchange may be deemed violative of the provisions thereof.

On September 4, 2002, the Exchange submitted a proposed rule change on a pilot basis, which was effective upon filing, that would allow the Exchange to not enforce a specific provision of its rules relating to trade-through

³ See Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002) (the "Order"). Participants of the ITS Plan are exempt from Section 8(d) of the Plan, for the period of September 4, 2002 until June 4, 2003, with respect to transactions in Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average Index ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs"), that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

protection for certain securities.⁴ The pilot expired on October 4, 2002. The Exchange is seeking to extend the pilot for an additional thirty days, until November 3, 2002.

In Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules, paragraph (c)(2) states that "All agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market. * * *" Moreover, in various sections of Chapter XV, *Dealer Specialists*, there are similar provisions.⁵ These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. The BSE specialist provides this protection to its customer limit orders in part due to the fact that the specialist can seek relief through ITS in the event of a trade-through.

As a result of the Commission's Order, certain primary market trades-through in ETFs will constitute exempt trades-through, but will still, under BSE Rules, trigger an obligation on the part of a BSE specialist to provide trade-through protection. However, the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market. Accordingly, the BSE specialist will be competitively disadvantaged if this section of its rules is strictly enforced, while the *de minimis* exemption exists for other ITS participants. Therefore, the BSE is seeking to implement an Interpretation of Chapter II, Section 33(c)(2) of its rules permitting the Exchange to not enforce the provision following a *de minimis* trade through of certain ETFs outlined in the Order.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act⁶ and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and

⁴ See Securities Exchange Act Release No. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002).

⁵ See, e.g., the Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to facilitate 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, that it is designed 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 constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act⁸ and subparagraph (f)(1) of Rule 19b-4 thereunder.⁹

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 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

⁸ 15 U.S.C. 78s(b)(3)(A)(i).

⁹ 17 CFR 240.19b-4(f)(1).

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 above-mentioned self-regulatory organization. All submissions should refer to File No. SR-BSE-2002-18 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-26684 Filed 10-18-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46644; File No. SR-CBOE-2002-60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for a Two-Month Period the Pilot Program for the Exchange's 100 Spoke RAES Wheel

October 10, 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 September 30, 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. The proposed rule change has been filed by CBOE as a "non-controversial" rule change under Rule 19b-4(f)(6) of the Act.³ 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

CBOE proposes to extend, for an additional two-month period, the pilot program that permits the appropriate Floor Procedure Committee ("FPC") to

allocate orders on the Exchange's Retail Automatic Execution System ("RAES") under the allocation system known as the 100 Spoke RAES Wheel.

The text of the proposed rule change is available at the Office of the Secretary, 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, the Proposed Rule Change

1. Purpose

On May 25, 2000, the Commission approved on a nine-month pilot basis the Exchange's proposal to amend Rule 6.8, which governs the operation of RAES,⁴ to provide the appropriate FPC with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.⁵ In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The 100 Spoke RAES Wheel pilot program is used as anticipated.

The pilot program was extended four times and currently ends on September 28, 2002.⁶ The Exchange now proposes to extend the pilot program for an additional two-month period ending

⁴ RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

⁵ Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000) (SR-CBOE-99-40).

⁶ Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (six-month extension, SR-CBOE-2001-07); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (four-month extension, SR-CBOE-2001-47); Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (six-month extension, SR-CBOE-2001-68); and Securities Exchange Act Release No. 46149 (June 28, 2002), 67 FR 45161 (July 8, 2002) (three-month extension, SR-CBOE-2002-34).

November 28, 2002 pending permanent approval of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change will continue to be consistent with the requirements of Section 6(b)(5) of the Act.⁷ Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate 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.

CBOE believes that the pilot program will continue to provide the appropriate FPC with flexibility in determining the appropriate allocation system for a given class of options on RAES. CBOE believes that the continuation of the pilot program will continue to reward those market makers who are most active in providing liquidity to agency business in the assigned option class.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is 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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the foregoing 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest,

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).