

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.<sup>10</sup>

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

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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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</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

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,<sup>4</sup> to provide the appropriate FPC with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.<sup>5</sup> 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.<sup>6</sup> The Exchange now proposes to extend the pilot program for an additional two-month period ending

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

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

<sup>6</sup> 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.<sup>7</sup> 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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,

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

provided that the self-regulatory organization has given 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, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal on September 30, 2002, the date of filing. September 30, 2002 is the first trading day after expiration of the pilot program on Saturday, September 28, 2002. Under Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow for the continued operation of the pilot without interruption.<sup>12</sup> According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of September 30, 2002 would cause disruption to those trading stations and thus, be disruptive to investors and the public interest. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission. The Commission also waives the five-business-day pre-filing requirement. 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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR-CBOE-2002-60 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46637; File No. SR-CME-2002-01]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Mercantile Exchange, Inc. Relating to Customer Margin Requirements for Security Futures

October 10, 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 September 27, 2002, Chicago Mercantile Exchange, Inc. ("CME" 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 CME. On October 7, 2002, the CME submitted

<sup>13</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.

Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CME proposes to amend its Rules as they pertain to customer performance bonds (or "margins") for Security Futures as detailed below. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are bracketed.

\* \* \* \* \*

#### 833. Customer Performance Bonds for Security Futures Held in Futures Accounts

*Performance bond (or "margin") requirements associated with Security Futures, as defined by Section 1a(31) of the Commodity Exchange Act (CEA), on behalf of Customers, as defined in Rule 930.B.2.b., whether effected on the Exchange or on a Marketplace apart from Exchange but cleared by the Clearing House per Chapter 8B, and held in a futures account (with any exceptions noted in the Rules), shall be determined and administered per the Rules of the Exchange; and, in compliance with CFTC Regulation Sections 41.42 through 41.49; and, SEC Regulation 242.400 through 242.406, including any successor Regulations. If Exchange Rules should be found to be inconsistent with CFTC Regulation Sections 41.42 through 41.49; and, SEC Regulation 242.400 through 242.406, including any successor Regulations, the CFTC and SEC Regulations shall prevail.*

930. Performance Bond Requirements: Account Holder Level

930.A. Performance Bond System

The Standard Portfolio Analysis of Risk (SPAN®) Performance Bond System is the performance bond system adopted by the Exchange. SPAN generated performance bond requirements shall constitute Exchange performance bond requirements. All references to performance bond within the rules of the Exchange shall relate to those computed by the SPAN system.

Performance bond systems other than the SPAN system may be used to meet Exchange performance bond

<sup>3</sup> See letter from Phupinder S. Gill, Managing Director and President, Clearing House Division, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated October 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced in its entirety the Form 19b-4 filed on September 27, 2002.