

proposal is similar to the NYSE and Nasdaq's proposals requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq's proposals were published for comment in the **Federal Register** and recently approved by the Commission.<sup>24</sup> The Commission believes that it already considered and addressed the issues that may be raised by the Exchange's proposal in its approval of the NYSE and Nasdaq's proposals.<sup>25</sup>

The Commission believes that accelerated approval of the Exchange's proposal is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans among the markets. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Exchange's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>26</sup> to approve the Exchange's proposal and Amendment No. 1 thereto on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-CBOE-2003-45) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

<sup>24</sup> See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. See Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). See Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). See *supra* note 5; see also *supra* note 11.

<sup>25</sup> Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Exchange, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. See *supra* note 5; see also *supra* note 11.

<sup>26</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48721; File No. SR-CBOE-2003-42]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. To Amend Rule 6.8, Interpretation and Policy .01, Relating to the Retail Automatic Execution System

October 30, 2003.

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 October 1, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend CBOE Rule 6.8, Interpretation and Policy .01 to allow broker-dealer orders that are eligible for execution on CBOE's Retail Automatic Execution System ("RAES") to automatically execute against limit orders on the CBOE book in classes designated by the appropriate Floor Procedure Committee. The text of the proposed rule change is set forth below. Proposed new language is in italics.

\* \* \* \* \*

#### Rule 6.8 RAES Operations

(a)-(g) No change.

\* \* \* Interpretations and Policies

.01 (a) Notwithstanding Rule 6.8(c)(ii), the appropriate Floor Procedure Committee ("FPC") may determine, by class and/or series to allow the following types of orders to be executed on RAES in accordance with the requirements of Rule 6.8, subject to the

<sup>28</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.

conditions set forth below in subparagraphs (b) and (c):

1. Broker-dealer orders; or  
2. Broker-dealer orders that are not for the accounts of market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934.

(b) The appropriate FPC may permit broker-dealer orders to be automatically executed pursuant to this Interpretation and Policy .01, subject to the following provisions:

1. Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book *unless permitted on a class-by-class basis by the appropriate Floor Procedure Committee*. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to a floor broker for representation in the trading crowd. Broker-dealer orders are not eligible to be placed in the limit order book pursuant to Rule 7.4.

2. The maximum order size eligibility for the broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer orders.

3. Non-broker-dealer orders may be eligible for automatic execution at the NBBO pursuant to Interpretations and Policies .02 of Rule 6.8, while broker-dealer orders may not be so eligible. In the event broker-dealer orders are not so eligible, they shall instead route to either PAR or BART.

4. The appropriate FPC may determine, by class and/or series, to prohibit access to RAES for broker-dealer orders after 3 pm.

(c) CBOE market-makers must assure that orders for their own accounts are not entered on the Exchange and represented or executed in violation of the following provisions: Interpretations and Policies .02 of Rule 6.55 and Interpretations and Policies .06 of Rule 8.9 (concurrent representation of a joint account), Rule 6.55 (concurrent representation of a market-maker account), and section 9 of the Securities Exchange Act of 1934 (wash sales).

.02-.09 No change.

\* \* \* \* \*

#### 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.

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

1. Purpose

The Exchange's RAES system was created to allow for the automatic execution of retail customer options orders against CBOE market makers at their disseminated prices. In 1999, the Exchange expanded the RAES system to allow incoming RAES orders to execute against customer limit orders on the CBOE book when such booked orders constitute the CBOE's best bid/offer.<sup>3</sup> Recently, the Exchange has allowed broker-dealer orders to be executed on RAES in classes/series designated by the appropriate Floor Procedure Committee.<sup>4</sup>

The Exchange now proposes to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on the CBOE's book in classes designated by the appropriate Floor Procedure Committee.

2. Statutory Basis

Because the proposed rule change will expand the number of orders eligible to trade automatically with booked customer limit orders, the Exchange believes the proposed rule change is consistent with section 6(b) <sup>5</sup> of the Act in general, and furthers the objectives of section 6(b)(5) <sup>6</sup> of the Act in particular, because it is designed to promote just and equitable principles of trade, 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.

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

The Exchange believes that the proposed rule change will not 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-42 and should be submitted by November 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48734; File No. SR-CHX-2003-31]

**Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies**

October 31, 2003.

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 October 6, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 30, 2003, the Exchange filed 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 and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to amend certain provisions of its rules to strengthen listing standards relating to shareholder approval for equity compensation plans.<sup>4</sup>

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

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

<sup>3</sup> Amendment No. 1 replaces the Exchange's original Rule 19b-4 filing in its entirety.

<sup>4</sup> The Commission notes that the Exchange is proposing to adopt listing standards relating to shareholder approval of equity compensation plans that are similar to those that the Commission recently approved for the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"). See Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR-NYSE-2002-46 and SR-NASD-2002-140). See also Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR-NASD-2003-130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR-NASD-2003-130. See Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003).

Continued

<sup>3</sup> See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (SR-CBOE-99-29).

<sup>4</sup> See Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR-CBOE-2002-22); 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002) (SR-CBOE-2002-35); and 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002) (SR-CBOE-2002-56).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).