

• Deletes Constitution Section 11.3, which authorizes the Chairman of the Board to establish Exchange departments. The section is unnecessary because the authority is encompassed within the Chairman's responsibility as Chief Executive Officer and inconsistent with the Exchange's current organizational structure, which consists of divisions made up of departments.

## 2. Statutory Basis

CBOE believes that the proposed rule change further enhances the fair and efficient governance of the Exchange and modernizes various provisions of the Exchange's governance structure. Therefore CBOE believes the proposed rule change furthers the objectives of section 6(b)(3) of the Act<sup>6</sup> to assure fair representation of the members of the Exchange in the selection of its directors and in the administration of its affairs. CBOE also believes that the proposed rule change furthers the objectives of section 6(b)(5) of the Act<sup>7</sup> to protect investors and the public interest.

### 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 not necessary or appropriate in furtherance of 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 self-regulatory organization 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-CBOE-2003-55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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-2003-55 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 03-31804 Filed 12-24-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48953; File No. SR-CBOE-2003-57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Trading of Index Options and Options on ETFs on the CBOE Hybrid System

December 18, 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 December

8, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 CBOE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to provide for the trading of index options and options on exchange traded funds ("ETFs") on the CBOE Hybrid System ("Hybrid System"). The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)-(d) No change.

(e) [Effective Date of Rule] *Classes Trading on Hybrid.*

[The Exchange will commence rollout of the Hybrid System by May 30, 2003.] By December 31, 2003, Hybrid will be operational in CBOE's 200 most active equity option classes and, by December 31, 2004, Hybrid will be operational in CBOE's 500 most active equity option classes. The Exchange intends to implement Hybrid floorwide in all other equity classes by the fourth quarter of 2006. *Index option classes and options on ETFs specifically designated by the appropriate Floor Procedure Committee may trade on the Hybrid System. In order to be eligible for trading on Hybrid, index option classes and options on ETFs must utilize an in-crowd Designated Primary Market Maker.*

\* \* \* \* \*

#### Rule 24.13 Trading Rotations

The opening rotation for index options shall be held at or as soon as practicable after 8:30 a.m. Chicago time. Except as the appropriate Floor Procedures Committee may direct, opening rotations shall be conducted in the order and manner the Order Book

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

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

<sup>5</sup> The Exchange asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> 15 U.S.C. 78f(b)(3).

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

<sup>8</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.

Official determines to be appropriate under the circumstances. The appropriate Floor Procedure Committee may provide for the opening rotation to be conducted by use of the Exchange's Rapid Opening System as set forth in Rule 6.2A or the Exchange's Hybrid Opening System as set forth in Rule 6.2B. The Order Book Official, with the approval of two Floor Officials, may deviate from any rotation policy or procedure issued by the appropriate Floor Procedures Committee when they conclude in their judgment that such action is appropriate in the interests of a fair and orderly market.

#### Interpretations and Policies

.01 No Change.

.02 Modified Opening Rotation—In conducting the opening rotation in S&P 100 options, certain option series having the nearest expiration may be opened as described in Interpretation .01 to Rule 6.2 ("main rotation"). The remaining series having the nearest expiration and other series having more distant expirations may be divided into one or more zones and be opened simultaneously with the main rotation by an Order Book Official in the following manner. One or more Lead Market Makers (LMM) in each zone shall be responsible for quoting a two-sided market in each of the series assigned to the zone. The markets will generally be set without prior indication of the imbalances to be facilitated. Only in the case of extreme market conditions or an extremely large imbalance of opening orders may the Order Book Official indicate the direction or size of the order imbalance. Upon receiving the LMM market, the Order Book Official will state the net imbalance in each series to the LMM who shall buy or sell it.

Instead of the procedure described in the paragraph above, the opening rotation in S&P 100 options may be conducted using the Exchange's Rapid Opening System. *Index options that trade on the Hybrid System must utilize the Hybrid Opening System, as described in CBOE Rule 6.2B.*

Upon conclusion of the main rotation, the Order Book Official conducting the main rotation will declare open trading in all series. Such declaration shall apply to the main rotation and to all zones which have completed opening rotation. Open trading in the series assigned to the zones shall not commence before the Order Book Official conducting the main rotation has made such declaration.

Market-Makers who wish to participate in the opening of series in which they do not hold LMM or SMM

appointments may transmit written non-cancelable proprietary and Market-Maker orders to the LMM in that zone ten minutes prior to the opening of trading. The participation on the opening imbalance will not exceed the participation of a Supplemental Market-Maker ("SMM") in that zone.

.03 No Change.

\* \* \* \* \*

#### Rule 24.15 [RAES Operations in] Automatic Execution of Index Options

The operations of the Retail Automated Execution System (RAES) for index options *not trading on the Hybrid System* are subject to Rule 6.8. *Rule 6.13 governs the automatic execution of index options trading on the Hybrid System.*

\* \* \* \* \*

#### Rule 24.19 Multi-Class Broad-Based Index Spread Orders

(a) No change.

(b)(i)–(iii) No change.

(iv) The priority of bids or offers received from the primary trading station will be determined, with respect to each other, by the terms of paragraphs (a) and (b) of Rule 6.45 *for non-Hybrid classes or by paragraphs (a)–(d) of Rule 6.45A for Hybrid classes*. Bids or offers received promptly from the other trading crowd may participate equally with equal bids or offers from the primary trading station that were received prior to the bids or offers from the other trading station. The meaning of promptly will be determined according to the size of the order and other relevant circumstances.

\* \* \* \* \*

#### 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 parts of such statements.

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

In May of 2003, the Commission approved the Hybrid System.<sup>6</sup> The Hybrid System merges the electronic and open outcry trading models, offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. Currently, the Exchange trades only equity options on the Hybrid System. The purpose of this rule filing is to provide for the trading of index options and options on exchange traded funds ("ETFs") on the Hybrid System.

#### Uniformity of Operation Between Equity and Index Options and Options on ETFs

The Exchange proposes that the Hybrid System will function in the exact same manner in index classes and options on ETFs as it does in equity option classes, the operation of which was described in detail in the Hybrid Release. All of the Hybrid rules, including CBOE Rules 6.13 and 6.45A, would apply to the indexes and options on ETFs in the exact same manner they apply to options on equities. As such, incoming electronic orders in index/ETF options would be eligible for automatic execution pursuant to CBOE Rule 6.13 and would be allocated via the Ultimate Matching Algorithm ("UMA"). Open outcry trades would be allocated pursuant to CBOE Rule 6.45(b) and the Quote Trigger and Quote Lock features of CBOE Rules 6.45A(c) and (d) would apply to index/ETF option trading. Index and ETF option market makers would be subject to the same market maker obligations as their equity brethren. The only rule changes necessary to accommodate Hybrid trading in index options are minor and non-substantive in nature, as described below.<sup>7</sup>

#### Changes to Index CBOE Rules 24.13, 24.15, and 24.19

CBOE proposes to amend CBOE Rule 24.13.02 clarifying that the Hybrid Opening System ("HOSS") will be utilized for all index classes trading on the Hybrid System.<sup>8</sup> The proposed rule

<sup>6</sup> See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) ("Hybrid Release").

<sup>7</sup> Equity option trading rules govern ETF trading.

<sup>8</sup> Currently, options on indexes and ETFs generally open in accordance with the opening procedures described in CBOE Rule 6.2A, Rapid Opening System. The HOSS rules were approved in the Hybrid Release.

change to CBOE Rule 24.15 would provide that retail automated execution systems ("RAES") will continue to be operational for non-Hybrid classes while CBOE Rule 6.13 will govern automatic executions in Hybrid classes.<sup>9</sup> Finally, the Exchange proposes to amend paragraph (b)(iv) of CBOE Rule 24.19 to delineate priority principles applicable to multi-class index option spreads in non-Hybrid versus Hybrid classes.

### Designation of Indexes Trading on Hybrid

CBOE also proposes to amend CBOE Rule 6.45A(e), which governs the rollout schedule for equity option classes, to give the appropriate Floor Procedure Committee ("FPC") the discretion to determine which index option classes and options on ETFs will trade on the Hybrid System. The exchange represents that this is identical to the equity option rule, where the appropriate committee determines the rollout schedule for equity option classes.

The current Hybrid rules only allow the trading of products in which there is a Designated Primary Market Maker ("DPM"). The Exchange does not propose any changes to these rules. As such, only those index or ETF option classes that have DPMs would be eligible to trade on the Hybrid System. An Index or ETF option class that does not have a DPM may not trade on the Hybrid System until such time that the DPM system is in place in that index or ETF option class or until the Exchange adopts additional rules allowing the introduction of Hybrid trading with other than a DPM (e.g., a Lead Market Maker or other type of trading structure).<sup>10</sup> The Exchange proposes amending language to Exchange CBOE Rule 6.45A(e) to incorporate the above restriction.

In determining which index or ETF option classes to trade on the Hybrid System, the appropriate committee would consider several factors. First, it would look to the level of trading volume in a particular index/ETF option class. Generally, active index/ETF option classes (of those with DPMs) would be introduced to Hybrid trading

<sup>9</sup> This is the same as for equity options on Hybrid, which are governed by CBOE Rule 6.13. Non-Hybrid equity option classes continue to be governed by CBOE Rule 6.8.

<sup>10</sup> Any such rules, of course, would be filed with the Commission. Options on the OEX, SPX, DJX, and DIA trade under a Lead Market Maker ("LMM") System. CBOE will not commence trading these products on Hybrid until it either adopts LMM rules applicable to Hybrid trading or until they convert to a DPM system. The Exchange currently has no intention of converting SPX, OEX, DJX, or DIA to a DPM system.

sooner than will those index/ETF option classes with low trading volume. Second, the FPC would consider the readiness of the trading crowd. Before the Exchange lists a product on the Hybrid System, it would provide education to the affected market participants in several different areas, such as: how Hybrid operates, how market participants connect to the Hybrid System, etc. Trading crowds exhibiting more readiness to trade likely would begin trading on the Hybrid System more quickly than will crowds not demonstrating the same level of readiness. Third, the FPC would consider market share in a particular index/ETF option class. An index or ETF option class in which the FPC believes the Exchange can obtain or maintain a high market share would be a prime candidate for Hybrid trading.

### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under section 6(b)(5) of the Act<sup>11</sup> in that 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 by providing automatic executions for eligible electronic orders; by providing an open outcry trading environment for trades to occur on the floor; and offer market participants the ability to electronically disseminate their own firm market quotes, which should result in a greater number of automatic executions for orders on the Exchange.

The Exchange also believes that extending Hybrid to selected index and ETF options, thereby adding market makers to the quoting equation, may have the effect of narrowing spreads and increasing depth.

#### 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>11</sup> 15 U.S.C. 78f(B)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii)<sup>14</sup> and designated the proposed rule change to become operative immediately to enable index options and options on ETFs to be traded on the Hybrid System immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.<sup>15</sup> CBOE currently trades equity options on the Hybrid System. The Exchange represents that the Hybrid System will function in the exact same manner in index classes and options on ETFs as it does in equity classes. The Commission notes that the operation of the Hybrid System was previously the subject of a full comment period pursuant to section 19(b) of the Act.<sup>16</sup> The Commission does not believe that proposed rule change raises any new issues of regulatory concern. Accordingly, the Commission believes that there is good cause, pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>17</sup> to designate that the proposal become operative immediately.

At anytime within 60 days of the filing of the proposed rule change, the

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> *Id.*

<sup>15</sup> For 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).

<sup>16</sup> 15 U.S.C. 78s(b).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

Commission may summarily abrogate such proposed 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>18</sup>

#### 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2003-57. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-2003-57 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48955; File No. SR-ISE-2003-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Extending the Waiver of Its Marketing Fee

December 18, 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 November 20, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") 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 ISE. 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 Exchange is proposing to extend the waiver of its marketing fee until June 30, 2004.

#### 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 ISE 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 ISE 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 amend the ISE's Schedule of Fees to extend the waiver of its marketing fee until June 30, 2004.<sup>3</sup> That

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

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

<sup>3</sup> The Commission notes that the ISE's marketing fee is \$.10 per contract and applies to market makers only for each public customer contract executed. In its filing initially adopting this fee, the ISE stated that the purpose of the fee is to provide the ISE with a source of funding for marketing efforts aimed at increasing order flow from

waiver currently is scheduled to expire on December 31, 2003.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of section 6(b)(4) of the Act<sup>4</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that by extending the fee waiver it is lessening the cost of trading on the ISE and thus encouraging greater competition between exchanges.

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

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(2)<sup>6</sup> thereunder. At any time within 60 days of the filing of such 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 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. Comments may also be

Electronic Access Members to the Exchange. See Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR-ISE-01-06) (implementing the marketing fee). The marketing fee was first waived in SR-ISE-2002-16. Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 27587 (July 19, 2002). The waiver has subsequently been extended twice. See Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 72116 (December 16, 2002) (SR-ISE-2002-26); and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003) (SR-ISE-2003-16).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 19b-4(f)(2).

<sup>18</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>19</sup> 17 CFR 200.30-3(a)(12).