

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44020; File No. SR-CBOE-01-07]

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

February 28, 2001.

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act")<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 27, 2001, the Chicago Board Options Exchange, Incorporated ("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. CBOE filed the proposal pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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

CBOE hereby proposes to extend, for an additional six-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. CBOE has designated this proposal as non-controversial and requests that the Commission waive both the five-day pre-filing notice and the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act,<sup>5</sup> to allow the proposal to be both effective and operative immediately upon filing with 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 pilot basis the Exchange's proposal to amend CBOE Rule 6.8, which governs the operation of RAES,<sup>6</sup> to provide the appropriate FPC with another choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.<sup>7</sup> In those classes where the 100 Spoke RAES Wheel is employed, the percentages of RAES contracts assigned to a participating market maker is essentially identical to the percentage of non-RAES in-person agency contracts traded by that market maker in that class. The Exchange now proposes to extend the pilot program for an additional six-month period ending August 28, 2001.<sup>8</sup> The pilot will continue to operate under its current terms and conditions.

CBOE believes that the 100 Spoke RAES Wheel pilot program has been used as anticipated. Use of the 100 Spoke RAES Wheel has expanded since its implementation, and it is currently used in approximately two-thirds to three-fourths of the equity options trading stations. CBOE believes that an extension of 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. In addition, 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 options class.

###### 2. Statutory Basis

CBOE believes that the proposed rule change will continue to be consistent with the requirements of section 6(b)(5) Act.<sup>9</sup> Section 6(b)(5) 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 mechanisms 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

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

CBOE has asserted that, because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate) 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. 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 the furtherance of the purposes of the Act.

CBOE has requested that the Commission waive the 30-day pre-operative waiting period, which will allow the Exchange to continue the pilot program without interruption until the Commission determines whether to approve the pilot on a permanent basis. The Commission believes that, 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, given the widespread use of the 100 Spoke RAES

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

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

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

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

<sup>7</sup> See Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000).

<sup>8</sup> The Exchange intends to submit a rule change in the near future proposing permanent approval of the 100 Spoke RAES Wheel allocation system.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of March 1, 2001, would cause disruption to those trading stations, and thus, be disruptive to investors and the public interest. Accordingly, the Commission finds good cause to waive the 30-day operative waiting period and to designate that the proposal become operative immediately.<sup>12</sup>

The Commission has also waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing.<sup>13</sup>

#### 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 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 Exchange. All submissions should refer to File No. SR-CBOE-01-07 and should be submitted by March 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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<sup>12</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. See 15 U.S.C. 78c(f).

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44025; File No. SR-PCX 01-12]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Listing and Trading of Options on Exchange-Traded Fund Shares

February 28, 2001.

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 February 27, 2001, the Pacific Exchange, Inc. ("PCX" 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 PCX. On February 28, 2001, the PCX submitted 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 from interested persons and to approve 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 PCX proposes to amend its rules to create listing criteria and amend trading rules to allow the Exchange to list options on Exchange-Traded Fund Shares. The text of the proposed rule change is available at the PCX or 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, the PCX 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 III below. The PCX 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 provide for the trading of options and FLEX options on Exchange-Traded Fund Shares.<sup>4</sup> As noted above, Exchange-Traded Fund Shares are exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies ("Funds") that hold securities based on an index or a portfolio of securities.<sup>5</sup> Exchange-Traded Fund Shares are issued in exchange for an "in kind" deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregations or multiples thereof ("Creation Units"). The size of the applicable Creation Unit size aggregation is set forth in the Fund's prospectus, and varies from one series of Exchange-Traded Fund Shares to another, but generally is of substantial size (e.g., value in excess of \$450,000 per Creation Unit). A Fund, generally, will issue and sell Exchange-Traded Fund Shares in Creation Unit size through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Exchange-Traded Fund Shares and the appropriate securities are received. Following issuance, Exchange-Traded Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Exchange-Traded Fund Shares is made in Creation Unit size and "in kind," with a portfolio of securities and cash exchanged for the Exchange-Traded fund shares that have been tendered for redemption.

Generally, options on Exchange-Traded Fund Shares are proposed to be

<sup>4</sup> In general, FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. See PCX Rule 8.

<sup>5</sup> Currently, the Exchange trades unit investment trust securities known as Portfolio Depository Receipts and Investment Company Units, which are issued by an open-end management investment company. Portfolio Depository Receipts and Investment Company Units are listed on the PCX pursuant to PCX Equities Rules 8.100(a) and 5.2(j)(3), respectively, and trade like shares of common stock. The Commission notes that not all Portfolio Depository Receipts and Investment Company Units trading on the PCX may meet the standards for options trading approved by this order.