

settling, processing information with respect to, and facilitating transactions in securities; 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 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 either solicited or received.

### **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 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 File No.

SR-BSE-00-22 and should be submitted by April 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8349 Filed 4-4-01; 8:45 am]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44104; File No. SR-CBOE-00-47]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Changes to Its Rule Governing the Retail Automatic Execution System ("RAES")**

March 26, 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 September 8, 2000, 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. On February 27, 2001, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 23, 2001, the CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The

<sup>1</sup> 47 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See letter from Timothy Thompson, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 23, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE amended its proposed rule language to eliminate: (1) The proposed requirement that Order Entry Firms execute an application and agreement with the Exchange; (2) the proposed language establishing a presumption that the Exchange's prohibition against unbundling would be violated when multiple orders were entered within a 15-second period; (3) the proposed prohibition against entering orders via RAES to perform a market-making function; and (4) the proposed prohibition against manipulation, which the CBOE indicated is covered by other applicable rules and regulations. Instead, the CBOE proposed to adopt a prohibition against the entry of multiple orders in a call class and/or put class for the same option issue within a 15-second period by an account or accounts for the same beneficial owner. The CBOE also made minor technical corrections to the proposed rule text. These provisions are discussed more fully in Sections II and IV below.

<sup>5</sup> See letter from Timothy Thompson, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change and Amendments No. 1 and 2.

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

The CBOE proposes to simplify Rule 6.8 ("Rule" or "RAES Rule") by ordering the provisions of the RAES Rule in a more organized fashion and by adopting new rules and procedures to establish means of assuring better compliance with the RAES Rule.

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in brackets.

\* \* \* \* \*

#### **CHAPTER VI**

#### **Doing Business on the Exchange**

##### **Section A: General**

\* \* \* \* \*

##### **RAES Operations**

\* \* \* \* \*

##### **Rule 6.8.**

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options. (a)[(i)] Firms on the Exchange's Order Routing System ("ORS") will automatically be on the Exchange's Retail Automatic Execution System ("RAES") for purposes of routing *eligible orders* [small public customer market or marketable limit orders] into the RAES system.

(b) *Definitions. For purposes of this Rule 6.8:*

(i) *The term "RAES" means the automated execution system feature of ORS that is owned and operated by the Exchange and that provides automated order execution and reporting services for option.*

(ii) *The term "User" means any person or firm that obtains access to RAES through an Order Entry Firm.*

(iii) *The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange's ORS.*

##### *(c) Eligible Orders.*

*An order must meet the following criteria to be eligible for RAES:*

(i) *The order must be a market order or a marketable limit order. A marketable limit order is a limit order where the specified price at which to sell is below or at the*

Director, Division, Commission, dated March 22, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE made minor technical changes to its proposed rule text. The CBOE also requested accelerated approval of the instant proposal and stated that the Commission has already approved similar proposals by other options exchanges.

current bid, or if to buy is above or at the current offer.

(ii) Orders are not eligible for execution on the RAES system if they are orders for accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer has an interest.

(iii) Those orders which are eligible for routing to RAES may be subject to such contingencies as the appropriate Floor Procedure Committee ("FPC") shall approve.

(iv) For purposes of this Rule, the term "broker-dealer" includes the term "foreign broker-dealer" as defined in Rule 1.1(xx).

[Public customer orders are orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including a foreign-broker as defined in Rule 1.1 (xx)) has an interest.]

(v) The appropriate [Floor Procedure Committee ("FPC")] FPC shall determine the size of orders eligible for entry into RAES [in accordance with paragraph (e) of this Rule]. Eligible orders must be for one hundred [seventy-five] or fewer contracts on series placed on the system. The appropriate FPC, in its discretion, may determine to restrict the size and kind of eligible orders, including but not limited to, lowering contract limits on particular option issues. Announcements concerning the size and kind of eligible orders will be made promptly as these are adjusted. The appropriate FPC will have discretion to place on the system such series in classes of options subject to its jurisdiction as it determines is appropriate.

(vi) Notwithstanding the provisions of sub-paragraph (c)(v) [paragraph (e) of this Rule], the appropriate FPC may increase the size or orders in one or more classes of multiply-traded options eligible for entry into RAES to the extent necessary to match the size of orders in options of the same class or classes eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(vii) For purposes of determining whether an order meets the maximum size requirement set forth in sub-paragraph (c)(v) [what a small customer order is], a customer's order cannot be split up such that its parts are eligible for entry into RAES. [Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their booths on the floor.]

(d) Execution on RAES.

[(ii)] (i) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in [Interpretation and Policy .02 under] this Rule 6.8 and the Interpretations to this Rule [in respect of multiply-traded options]. A buy order will pay the offer, a sell order will sell at the bid. Marketable limit orders will not be executed to sell for less or buy for more than the

specified price, but the order can be executed to sell for a higher price or buy for a lower price. However, if the order's limit price is under \$3, RAES will execute the order only if the necessary bid or offer is ½ point or less from the limit price. If the order's limit price is \$3 or more, RAES will execute the order only if the necessary bid or offer is one dollar or less from the limit price.

(ii) A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-broker on the trade.

(iii) A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

[(b)] (iv) [It is possible that the prevailing market bid or offer may be equal to the best bid or offer on the Exchange's book. In those instances, a RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the rest of the order was executed.] When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator". It is possible that the best bid or offer on the Exchange's book constitutes the prevailing market bid or offer. In those instances, a RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price Commitment Quantity"). Any remaining balance thereafter shall be [(i)] (A) routed to the crowd PAR terminal if Autoquote is not in effect for that series; [(ii)] (B) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or [(iii)] (C) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quantity. Any additional remaining balance of a RAES order shall be handled in accordance with [(ii)] (B) or [(iii)] (C) of this paragraph.<sup>5</sup>

[(c)] (v) Notwithstanding sub-paragraph (d)(iv) [(b)], for a six month pilot program ending August 21, 2001, for any series of options where the bid or offer generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) crosses or locks the Exchange's best bid or offer as established by an order in the Exchange's customer limit order book, orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal

or to another location in the event of system problems or contrary firm routing instructions.

(e) Order Entry Firms. Order Entry Firms shall:

(i) Comply with all applicable CBOE options trading rules and procedures;

(ii) Provide written notice to all Users regarding the proper use of RAES;

(iii) Neither enter nor permit the entry of multiple orders in a call class and/or put class

for the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

Violations of this rule may be referred to the Business Conduct Committee for appropriate disciplinary action.

[(f)] [(d)] Participating Market-Makers.

(i) Participating Market-Makers will be assigned trades by RAES [on a rotating basis, with the first Market-Maker selected at random from the list of Participating Market-Makers,] in accordance with procedures adopted by the appropriate FPC pursuant to Interpretation .06 of this Rule. [Participating Market-Makers are obligated to trade at the displayed market quote at the time an order enters the system.] Exchange rules shall not apply to the extent that they are inconsistent with these terms, including but not limited to Rule 6.45 (Priority of Bids and Offers), Rule 6.43 (Manner of Bidding and Offering), and Rule 8.1 (Market-Maker Defined). Applicable position and exercise limits will remain in effect for RAES transactions. Transactions executed through RAES orders will count towards fulfillment of the in-person requirement of Rule 8.7.

(ii) To the extent possible, a [A] participants will be informed of trades immediately upon execution. A fill report may be generated to the firm at the firm's point of entry into the system (i.e., either its branch office or floor booth), and a trade acknowledgement ticket ("TAT") will be made available to Participating Market-Makers in a manner prescribed by the Exchange. [A log for all transactions will be available throughout the day for review by participants. Audit reports will be sent to the Exchange's Regulatory Services Division.]

[(e) Eligible orders must be for fifty or fewer contracts on series placed on the system, except that eligible orders for interest rate options or for options on the S&P 500 Index, the Nasdaq 100 Index or the Dow Jones Industrial Average must be for one hundred or fewer contracts on series placed on the system. The appropriate FPC, in its discretion, may determine to restrict the size and kind of eligible orders, including but not limited to, lowering contract limits.

Announcements concerning the size and kind of eligible orders will be made promptly as these are adjusted. The appropriate FPC will have discretion to place on the system such series in classes of options subject to its jurisdiction as it determines is appropriate.]

[(f)] (g) Each day the system is available, a post director or his representative will start the system, after quotes in the eligible series have been updated following the opening of the option class [rotation]. If the system is or becomes unavailable, for any reason, eligible orders will be handled as they are handled currently in non-eligible option series.

[(g) A marketable limit order is a limit order where the specified price at which to sell is below or at the current bid, or if to buy is above or at the current offer. Marketable limit orders will not be executed to sell for less or buy for more than the specified price, but the order can be executed to sell for a higher price or buy for a lower price. However, if the order's limit price is under \$3, RAES will execute the order only if the necessary bid or offer is 1/2 point or less from the limit price. If the order's limit price is \$3 or more, RAES will execute the order only if the necessary bid or offer is one dollar or less from the limit price.]

\* \* \* Interpretations and Policies

.01 [Reserved.] [Notwithstanding the provisions of paragraph (e) of this Rule, the appropriate FPC may increase the size or orders in one or more classes of multiply-traded options eligible for entry into RAES to the extent necessary to match the size of orders in options of the same class or classes eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.]

.02-.08 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

a. *Background.* RAES has been in operation on the Exchange since the Commission approved it as a pilot program for Standard & Poor's 100 Index Options ("OEX") in 1984.<sup>6</sup> Since its inception, RAES was designed to provide automatic execution of non-broker-dealer customer orders at the Exchange's displayed bid and ask prices<sup>7</sup> for market or marketable limit

orders of ten contracts or fewer. Recently, in response to requests of its customers and based upon the popularity of the RAES system with these customers, the Exchange amended its RAES Rule to allow for the appropriate Floor Procedure Committee to provide on an issue-by-issue basis for orders of up to one hundred contracts to be executed on RAES.<sup>8</sup>

b. *Definitions.* The Exchange proposes to add a number of definitions in proposed paragraph (b) of the RAES Rule so that the meaning of each of these terms is clear to members and users of RAES. The term "RAES" is defined as the automated execution system feature of the Order Routing System ("ORS") that is owned and operated by the Exchange and that provides automated execution and reporting services for options.

The terms "User" means any person or firm that obtains access to RAES through an Order Entry Firm.

The terms "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange's ORS.

c. *Eligible Orders.* Proposed paragraph (c) of the RAES Rule includes all of the provisions of current RAES Rule which concern the eligibility of orders to be executed on RAES. Many of these provisions are scattered throughout the current version of the Rule and are now proposed to be moved to paragraph (c).

d. *Execution on RAES.* Proposed paragraph (d) of the RAES Rule includes all the provisions of the RAES Rule which concern the execution of RAES orders. The proposed changes merely consist of reorganizing and renumbering current provisions of the Rule.

e. *Order Entry Firms.* The Exchange proposes to add new paragraph (e) to the RAES Rule which will provide that Order Entry Firms, as defined in paragraph (b), agree to: (1) Comply with all applicable CBOE options trading rules and procedures; (2) provide written notice to all Users regarding the proper use of RAES; and (3) neither enter nor permit the entry of multiple orders in a call class and/or put class for the same option issue within any 15-second period for an account or

either reject the order for manual handling or execute the order automatically at the current best bid or offer if the current best bid or offer is not more than a designated number of ticks better than the CBOE bid or offer. The appropriate Floor Procedure Committee of the Exchange determines the number of ticks better than CBOE best bid or offer at which the current best bid or offer may be in order for RAES order to be executed automatically at the current best bid or offer price.

<sup>8</sup> See Securities Exchange Act Release No. 44008 (February 27, 2001), 66 FR 13599 (March 6, 2001) (approving File No. SR-CBOE-01-03).

accounts of the same beneficial owner. The Exchange determined to make these changes to protect investors and other market participants from the potential negative consequences that might result from Order Entry Firms engaging in prohibited conduct. The Exchange further wanted to ensure that the member that provides access to RAES to its customers is ultimately responsible for the orders that are entered by its customers. The Exchange believes that these safeguards are more important than ever now that a growing number of members have direct access to the Exchange's ORS and to RAES.

The Exchange has otherwise renumbered the remaining paragraphs of the Rule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)<sup>9</sup> of the Act in general, and furthers the objectives of section 6(b)(5)<sup>10</sup> of the Act in particular, in that it will promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, and 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.

### 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 CBOE requests that the proposed rule change and Amendments No. 1 and 2 be given accelerated effectiveness pursuant to section 19(b)(2)<sup>11</sup> of the Act. The Exchange believes that because the proposed rule change is essentially identical to rules of other options exchanges that the Commission has already noticed for public comment and recently approved,<sup>12</sup> the proposed rule change raises no new issues. Furthermore, the CBOE believes that

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78(b)(2).

<sup>12</sup> See, e.g., Securities Exchange Act Release No. 43971 (February 15, 2001), 66 FR 11344 (February 23, 2001) (order partially approving File No. SR-PCX-00-05).

<sup>6</sup> See Securities Exchange Act Release No. 21549 (December 7, 1984), 49 FR 49195 (December 18, 1984) (approving File No. SR-CBOE-84-30).

<sup>7</sup> If the current best bid or offer, as such bids or offers are identified on RAES, is being quoted on another exchange for a particular series, RAES will

accelerated approval of the proposed rule change filing will ensure that the Exchange's market makers are not placed at a competitive disadvantage to those market makers who are trading at an exchange that currently has a similar prohibition in place. The CBOE further believes that acceleration of the proposed rule change will ensure that the Exchange's public customers can enjoy the benefits that the Exchange expects to be derived from the proposed rule at the earliest possible time.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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. 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 File No. SR-CBOE-00-47 and should be submitted by April 26, 2001.

#### V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change and Amendments No. 1 and 2 Thereto

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).<sup>13</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)<sup>14</sup> of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in

general, to protect investors and the public interest.

The Commission finds that the Exchange's proposed provisions under paragraph (b) of the RAES Rule, codifying and defining the terms "RAES," "User," and "Order Entry Firm," will help provide RAES participants with more clarity and guidance and a better understanding of the use of these terms as used in the CBOE's rules governing RAES.

The Commission also finds that the Exchange's proposed paragraph (c) of the RAES Rule, entitled "Eligible Orders," and proposed paragraph (d) of the RAES Rule, entitled "Execution on RAES," will help organize various scattered provisions throughout the CBOE's RAES Rule regarding the eligibility of orders and the execution of these orders through RAES. The Commission believes that this reorganization will better clarify the RAES Rules of Order Entry Firms and Users of RAES.

Furthermore, the CBOE proposes to add new paragraph (e) to the RAES Rule to specify that Order Entry Firms comply with certain requirements. First, Order Entry Firms must comply with all applicable CBOE options trading rules and procedures. Second, Order Entry Firms must provide written notice to all Users regarding the proper use of RAES. Finally, Order Entry Firms must neither enter nor permit the entry of multiple orders in a call class and/or put class for the same option issue within any 15-second period for an account or accounts of the same beneficial owner.

The Commission finds that paragraph (e) makes explicit the responsibilities and requirements of Order Entry Firms. The Commission recognizes that the Exchange's proposal will place an explicit prohibition against Order Entry Firms entering or permitting the entry of multiple orders in a call class and/or put class for the same option issue within any 15-second period for an account or accounts of the same beneficial owner. The Commission finds that such prohibition is similar to, although not exactly identical to, provision that it has already approved for other options exchanges.<sup>15</sup> The Commission therefore finds that this 15-second requirement as applicable to

multiple orders from the same beneficial owner is consistent with the provisions of the Act and rules thereunder.

Furthermore, the Commission believes that accelerated approval of the proposal is appropriate to ensure that the Exchange's market makers are not placed at a competitive disadvantage to those market makers who are trading at an exchange where a substantially similar requirement is currently in place. For these reason, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>16</sup> to accelerate approval of this proposed rule change and Amendments No. 1 and 2.

Furthermore, the Commission finds good cause for approving the proposed rule change and Amendments No. 1 and 2 prior to the thirtieth day after notice of the publication in the **Federal Register**. In addition to making minor technical changes to the proposed rule language, Amendment No. 1 proposes a prohibition against the entry of multiple order in a call class and/or put class for the same option issue within 15-second period by an account or accounts for the same beneficial owner. In addition, Amendment No. 1 amends the proposed rule language to eliminate: (1) The proposed requirement of Order Entry Firms to execute an application and agreement with the Exchange; (2) the proposed language establishing a presumption that the Exchange's prohibition against unbundling would be violated when multiple orders were entered within a 15-second period; (3) the proposed prohibition against entering orders via RAES to perform a market-making function; and (4) the proposed prohibition against manipulation, which the CBOE indicated is covered by other applicable rules and regulations. The CBOE further made minor technical corrections to the proposed rule text. In Amendment No. 2, the CBOE, in addition to making additional technical corrections to the proposed rule text, requested accelerated approval of the instant proposal and stated that the Commission has already approved similar proposals by other options exchanges. The Commission believes that it is not necessary to separately solicit comment on these amendments prior to approving this proposal because it finds that these changes to the proposed rule language are necessary to accomplish the intended goals of the Exchange's proposal. In particular, the Commission believes that the Exchange's establishment of a prohibition on members entering or

<sup>13</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See Securities Exchange Act Release Nos. 43971 (February 15, 2001), 66 FR 11344 (February 23, 2001) (order partially approving File No. SR-PCX-00-05); and 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001) (ordering approving File No. SR-ISE-00-20). The Commission approved proposals by the International Stock Exchange LLC ("ISE") and the Pacific Exchange, Inc. ("PCX") that prohibit members from entering multiple orders for the same beneficial account within a 15-second period.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

permitting the entry of multiple orders from the account or accounts of the same beneficial owner within a 15-second period, in lieu of a presumption regarding the unbundling of such orders, will add certainty and consistency to the enforcement of the Rule and provide Order Entry Firms with clarity as to what conduct violates the Rule. The Commission therefore finds that acceleration of Amendments No. 1 and 2 is appropriate.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-CBOE-00-47), and Amendments No. 1 and 2 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8346 Filed 4-4-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44121; File No. SR-CBOE-00-48]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to RAES Eligibility Requirements for OEX and DJX Options

March 27, 2001.

#### I. Introduction

On September 20, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to amend CBOE Rule 24.17, which governs the eligibility of Market-Makers to participate on the Exchange's Retail Automatic Execution System ("RAES") in options on the Standard & Poor's 100 Index ("OEX") and on the Dow Jones Industrial Average ("DJX").

The proposed rule change was published for comment in the **Federal**

**Register** on December 14, 2000.<sup>3</sup> On January 31, 2001, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 24.17

(b) Individuals.

(iv) An individual member who is logged onto RAES must log off the system whenever he leaves the trading crowd, *unless the departure is for a brief interval.*

(v) RAES participation in the Option Class is limited to Market-Makers in that Option Class. To qualify, a Market-Maker must:

(A) be approved under Exchange rules as a Market-Maker with a letter of guarantee, *and,*

(B) maintain his principal business on the CBOE as a Market-Maker.[.]

[(C) execute at least seventy five percent of his Market Maker contracts for the preceding calendar month in that Option Class, and

(D) execute at least seventy five percent of his Market Maker trades for the preceding calendar month in that Option Class in person.

In making these calculations, RAES trades will not be considered.]

(vi) A Market-Maker may be eligible to participate in RAES in OEX and DJX during the same calendar month as long as:

(A) OEX and DJX are trading in the same physical trading structure on the floor of the Exchange, *and*

(B) that Market-Maker satisfies the requirements of sub-paragraphs (b)(v)(A) and (b)(v)(B). [., and]

[(C) that Market Maker meets one of the following three criteria: (1) The Market Maker satisfies the requirements of (b)(v)(C) and (b)(v)(D) with respect to OEX; (2) the Market Maker satisfies the requirements of (b)(v)(C) and (b)(v)(D) with respect to DJX; or (3) the Market Maker satisfies the requirements of (b)(v)(C) with respect to contracts in OEX and DJX combined and (b)(v)(D) with respect to his Market Maker trades in either OEX or DJX.]

A Market-Maker must be present in the particular trading crowd where the class is traded while he is participating in RAES for that class.

(c) Joint Accounts.

(iii) Members of the joint account that are not present in the trading crowd for the

Option Class may not be logged onto RAES. Any member of the joint account that has been logged onto RAES must log off the system whenever he leaves the trading crowd for the Option Class *for other than a brief interval.* Once a member of a joint account has been logged onto RAES for that Option Class at any time during an expiration cycle, each member of that account must be logged onto RAES for that Option Class at any time that he enters the trading crowd for that Option Class from the date of the initial log on through the business day immediately preceding expiration.

(e) Authority to Disapprove

(i) No person or entity may participate directly or indirectly in RAES, or share in the profits, directly or indirectly, with more than one RAES group. [., which may not exceed the maximum number of RAES participants set by the appropriate Committee from time to time. In no event may the appropriate Committee set a maximum number higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The appropriate Committee will give groups one month notice if a reduction in group size becomes necessary due to application of the this size limit. The appropriate Committee reserves the authority to establish lower limits on the size of groups eligible to use RAES. Such limits may be imposed by the Committee at any time.]

(ii) The appropriate Committee [also] retains the right to disallow any group from participating in RAES where it appears to the Committee that such group:

(A) has "purchased" RAES rights from members of the group;

(B) does not afford each group participant a reasonable participation in profits and losses (as a guideline: no RAES participant may receive a flat fee, and a minimum participation level of any group member is 1/4 of an equal distribution to all group members, with responsibility for losses equivalent to share of profits);<sup>4</sup>

(C) is managed by a person who is not a member of the group; or

(D) is managed by a person who has a financial interest in another group.

(f) Authority to Require RAES Participation

(i) Notwithstanding the limitations in paragraph (b)(v)[(C) and (D)] and paragraph (b)(vi), if there appears to be inadequate RAES participation in the Option Class, the chairperson of the appropriate Committee, or a designee thereof, in consultation with a senior Exchange executive officer, may require Market-Makers who are members of the trading crowd, as defined in Rule 8.50 to log on to RAES absent reasonable justification or excuse for non-participation. If there continues to be inadequate RAES participation, the chairperson of the appropriate Committee or a designee, in consultation with a senior Exchange executive officer, may request participation of all Market-Makers whether or not they are members of the Option Class crowd.

\* \* \* \* \*

#### II. Description of the Proposal

Currently, Rule 24.17(b)(v) sets forth four eligibility requirements that must

<sup>17</sup> *Id.*

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>19</sup> 15 U.S.C. 78s(b)(1).

<sup>20</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 43676 (December 5, 2000), 65 FR 78231.

<sup>4</sup> See letter from Jamie Galvin, Attorney, Legal Division, CBOE, to Steven Johnston, Special Counsel, Division of Market Regulation, Commission, dated January 31, 2001. Amendment No. 1 proposes an exception to a requirement that Market-Makers remain logged onto RAES ("Amendment No. 1").