

CBOE proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. By extending to members of joint accounts the "brief interval" exception to the RAES log-on requirement, Amendment No. 1 provides for more consistent application of that exception. Therefore, the Commission finds good cause for accelerating approval of Amendment No. 1.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether it 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 Section. Copies of Amendment No. 1 to the proposed rule change will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. CBOE-00-48 and should be submitted by April 26, 2001.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>20</sup> that the proposal (SR-CBOE-00-48) be and hereby is, approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8347 Filed 4-4-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44134; File No. SR-CBOE-01-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Regarding the Duration of Equity Linked Term Notes

March 29, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 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. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its listing standards relating to the durational requirements of Equity Linked Term Notes ("ELNs"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

In its filing with the Commission, 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 CBOE 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

##### 1. Purpose

On September 30, 1994, the Commission approved listing criteria for Equity Linked Term Notes trading on the Exchange.<sup>4</sup> ELNs are intermediate-term, hybrid instruments whose value is linked to the performance of a highly-capitalized, actively traded common stock, not-convertible preferred stock, or sponsored American Depositary Receipt ("ADR"). CBOE Rule 31.5(I) establishes the listing criteria for ELNs. Among these criteria, 31.5(I)(a) requires that ELNs have a term of two to seven years, but no more than three years, if the issuer is a non-U.S. company. The Exchange initially adopted this term minimum to help ensure that the trading of ELNs did not have an adverse effect on the liquidity of the underlying stock and were not used in a manipulative manner.

Since the Exchange began listing ELNs for trading, the possible adverse effects set forth above have not manifested themselves. In fact, the Exchange believes that ELNs may complement the trading of the underlying stocks and the continued popularity of ELNs amply demonstrates their appeal in the market. Accordingly, the Exchange proposes to amend Rule 31.5(I)(a) to reduce the minimum term requirement of ELNs from two years to one year and to eliminate the maximum term requirement of three years for when the issuer is a non-U.S. company.<sup>5</sup>

The Exchange believes that the proposed changes to the term requirements will provide issuers with more flexibility in developing ELNs and thus provide greater investment choices in the market. In this respect, the Exchange notes that many corporate debt instruments have terms in excess of seven years, and that this rule change will allow the structuring of ELNs with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELNs will provide issuers with the ability to offer variations on ELNs, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an

<sup>4</sup> Securities Exchange Act Release No. 34759 (September 30, 1994), 59 FR 50939 (October 6, 1994) (approving SR-CBOE-94-04).

<sup>5</sup> The Exchange notes that it will provide the Commission with advance notice if it intends to list ELNs linked to a non-U.S. security and the issue has a duration of more than three years.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b(f)(6).

adverse effect on investor protection. The Exchange also notes that it has in place surveillance procedures with respect to ELNs and the securities linked to ELNs for the purposes of identifying and deterring manipulative trading activity.

The proposed amendment will allow CBOE to conform its listing requirements applicable to ELNs to the criteria established by the rules of the other exchanges. In this respect, CBOE notes that the Commission has approved identical rule changes of the New York, American, and Chicago Stock Exchanges.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

## 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 the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) or Rule 19b-4 thereunder.<sup>10</sup> Because the foregoing 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) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6).<sup>12</sup> The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. 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 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 Section. 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-01-06 and should be submitted by April 26, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8353 Filed 4-4-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44133; File No. SR-NYSE-00-21]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Electronic Delivery of Proxy Materials and Proxies

March 29, 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 May 3, 2000, the New York Stock Exchange, Inc. ("NYSE" 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 February 23, 2001, the Exchange 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, as amended, from interested persons. The Commission has also decided to grant accelerated approval to the amended proposed rule change.

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

The proposed rule change consists of amendments to Section 402.04 of the *Listed Company Manual* ("Manual"). This section of the Manual sets forth the proxy solicitation requirements for listed companies. The text of proposed rule change follows. Additions are in *italics*; deletions are [bracketed].

## NYSE Listed Company Manual

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## Section 4 Shareholders' Meetings and Proxies

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## 402.04 Proxy Solicitation Required

(A) Actively operating companies are required.

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<sup>6</sup> See Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999) (order approving SR-NYSE 99-22); Securities Exchange Act Release No. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (order approving SR-Amex 99-33); and Securities Exchange Act Release No. 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (order approving SR-CHX-99-19).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon M. Lawson, Division of Market Regulation, SEC, dated February 22, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed changes to the text of the rule that clarifies that electronic delivery of proxy materials and proxies must be effected in compliance with applicable federal and state laws, including for the purposes of this rule, interpretations of the Commission.