

“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to institute “Market at 4 p.m.” (“MCC”) Orders for Exchange Traded Funds (“ETFs”). On April 17, 2003 the Amex amended the proposal. ³

The proposed rule change, as amended, was published for comment in the **Federal Register** on May 1, 2003. ⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange ⁵ and, in particular, the requirements of section 6 of the Act ⁶ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act ⁷ because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Commission believes that the procedures proposed for executing MCC Orders are similar to those currently existing for “Market at the Close” (“MOC”) Orders for all Amex-listed stocks. The Commission also notes that the MOC Order procedures for Amex-listed stocks have been approved on a permanent basis since 1992. ⁸ The Commission also

believes that the procedures for executing MCC Orders may potentially provide customers with additional flexibility in order execution by permitting transactions in ETFs near the close of the day at a price that is closely related to the closing price of the underlying components for those ETFs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, ⁹ that the proposed rule change (SR-Amex-2003-17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-14371 Filed 6-6-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47959; File No. SR-CBOE-2002-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 5 and 6 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of the CBOE Hybrid System

May 30, 2003.

I. Introduction

On January 18, 2002, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to implement the CBOE Hybrid System. The CBOE filed Amendments No. 1, 2, 3, and 4 to the proposed rule change on April 2, 2002, May 17, 2002, January 16, 2003, and April 7, 2003, respectively. ³ The proposed rule change and Amendments No. 1, 2, 3, and 4 were published for comment in the **Federal Register** on April 22, 2003. ⁴ The Commission received two comment

procedures to execute MOC orders on every trading day).

¹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 4 supersedes the original filing and Amendments No. 1, 2, and 3 in their entirety.

⁴ Securities Exchange Act Release No. 47676 (April 14, 2003), 68 FR 19865.

letters on the proposal. ⁵ The Exchange filed Amendments No. 5 and 6 to the proposal on May 16, 2003 ⁶ and May 30, 2003, ⁷ respectively. The CBOE also submitted a letter responding to the ISE Letter on May 16, 2003. ⁸ This order approves the proposed rule change and Amendments No. 1, 2, 3, and 4; grants accelerated approval to Amendments No. 5 and 6 to the proposed rule change; and solicits comments from interested persons on Amendments No. 5 and 6.

II. Description of the Proposal

The Exchange proposes to implement the CBOE Hybrid System (“Hybrid” or

⁵ Letters from Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange (“ISE”), to Jonathan G. Katz, Secretary, Commission, dated May 13, 2003 (“ISE Letter”); and Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Exchange, Inc. (“PCX”), to Jonathan G. Katz, Secretary, Commission, dated May 21, 2003 (“PCX Letter”).

⁶ Letter from Steve Youhn, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (“Division”), Commission, dated May 15, 2003 (“Amendment No. 5”). Amendment No. 5 revises proposed CBOE Rule 6.13(b)(iii) to clarify that if a marketable balance remains after a split price execution, it would be booked automatically only if the order is eligible for book entry. Otherwise, the balance would route either to PAR or BART, or, at the order entry firms’ discretion, to the order entry firm’s booth printer. Amendment No. 5 also revises proposed CBOE Rule 7.4(a) to require electronic submission of orders or quotes for entry into the electronic book, and to require such orders and quotes to comply with format requirements prescribed by the Exchange. Finally, Amendment No. 5 moves the sentence, “Orders not eligible for automatic execution instead will route to PAR, BART, or, at the order entry firm’s discretion, to the order entry firm’s booth printer” from proposed CBOE Rule 6.13(b)(i)(B)(ii) to proposed CBOE 6.13(b)(i)(B), and rennumbers subsection (B) as subsection (C).

⁷ Letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated May 30, 2003 (“Amendment No. 6”). First, Amendment No. 6 amends proposed CBOE Rule 6.45A(a)(i) to clarify that only in-crowd DPMs can be considered to be “market participants.” Second, Amendment No. 6 amends proposed CBOE Rule 6.45A(c), regarding interaction of market participant’s quotes and/or orders with orders in electronic book, to clarify that a trade occurs when a market participant’s quote or order interacts with the order in the book; and that the CBOE would disseminate a last sale report at this point and decrement the disseminated quote to reflect the execution. Third, Amendment No. 6 describes in greater detail the ability of market makers to submit two-sided and one-sided quotes (referred to as orders). Fourth, Amendment No. 6 clarifies that the FPC generally has the discretion to determine whether to route orders through PAR or BART, and clarifies how the FPC would use that discretion. Fifth, Amendment No. 6 clarifies the routing process for orders that would be eligible for automatic execution when the CBOE is not at the NBBO. Sixth, Amendment No. 6 amends proposed CBOE Rule 6.45A(c) to clarify that customer orders would be the only type of order represented by floor brokers that would be eligible to participate in the N-second group.

⁸ Letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated May 15, 2003 (“CBOE Response Letter”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Geraldine Brindisi, Vice-President and Corporate Secretary, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2003 (“Amendment No. 1”). In Amendment No. 1, the Amex replaced in its entirety the original proposed rule change.

⁴ See Securities Exchange Act Release No. 47725 (April 23, 2003), 68 FR 23337.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Securities Exchange Act Release No. 31610 (December 16, 1992), 57 FR 61131 (December 23, 1992) (SR-Amex-92-34) (permanently approving