

Exchange market, and the markets that are maintained in the issuers' stocks. Specialists also would be required to contact (quarterly) off the Floor or, if on the Trading Floor, outside of the Exchange's regular auction market business hours, major order flow providers to maintain open communications with these important customers of the Exchange. The purpose of these contacts with order flow providers is to discuss the service, operational and competitive requirements of the member firms. In addition, specialists would be required to maintain records of these contacts, which would be reviewed by Amex staff.

The Exchange notes that the purpose of requiring contacts to be made by specialists off the Floor or, if on the Floor, outside of regular auction market business hours, is to ensure that the contacts can occur without the distractions of a normal business day. The Performance Committee would be responsible for taking appropriate remedial action in the event that a specialist fails to meet the objective marketing standards.

A review by the Performance Committee can result in a variety of possible actions, ranging from recommendations for performance improvement, a determination not to permit a firm to seek new allocations, to a reallocation of one or more securities from a specialist. The Performance Committee is not precluded from reallocating securities based on a single quarter of deficient performance. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of these standards is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial action is necessarily an issue that involves the professional judgment of the Performance Committee members and is dependent on such matters as the securities being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that the Exchange's procedures are designed to promote just and equitable

principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

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

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition within the Exchange, and, more significantly, among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing (although this, too, is important), but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange also believes the Commission has expressly recognized that the types of procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate, are necessary to ensure quality markets.<sup>9</sup>

### *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 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 Exchange 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, 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 Exchange.

All submissions should refer to File No. SR-Amex-2002-48 and should be submitted by February 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47287; File No. SR-CBOE-2002-40]

### **Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index**

January 30, 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 July 22, 2003, 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 January 13, 2003, CBOE filed an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing

<sup>10</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> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division

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

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

<sup>9</sup> See Securities Exchange Act Release No. 45260 (January 9, 2002), 67 FR 2255 (January 16, 2002) (order approving Amex-2001-19).