

are highly liquid, which should reduce the likelihood that any market participant has an unfair information advantage about the ETF, its related options, or its component securities, or that a market participant would be able to manipulate the prices of the ETF or related options. Moreover, to address concerns about any market participant having an unfair competitive advantage over others in the crowd, Exchange Rule 174 requires integrated specialists in a side-by-side trading environment to disclose trading interest on the limit order book in iShares Lehman Treasury Index ETFs and related options upon request.<sup>9</sup> Lastly, the Commission expects the Exchange to continuously surveil these trading arrangements regularly and to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices.

## II. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2002-96), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47318; File No. SR-CBOE-2002-49]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES Access Rules for Broad-Based Index Options and Options on Exchange-Traded Funds on Broad-Based Indexes

February 5, 2003.

#### I. Introduction

On November 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or the "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 proposed rule change relating to RAES eligibility requirements for market makers in broad-based index options and options on exchange traded funds on broad based indexes. The **Federal Register** published the proposed rule change for comment on December 27, 2002.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of Proposal

Currently, the eligibility of CBOE market-makers to participate in trades through the Retail Automatic Execution System ("RAES") in option classes on broad-based indexes, including OEX and SPX, as well as option classes on exchange traded funds ("ETFs")<sup>4</sup> on broad-based indexes (collectively, "index-related options") is governed under three different Exchange rules. CBOE Rule 8.16 governs RAES eligibility for all options classes other than DJX, OEX, and SPX. CBOE Rule 24.17 addresses RAES eligibility for market-makers in OEX and DJX. Finally, CBOE Rule 24.16, which is separate yet functionally identical to CBOE Rule 24.17,<sup>5</sup> governs RAES eligibility for market makers in the SPX.

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

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

<sup>3</sup> Securities Exchange Act Release No. 47033 (December 19, 2002), 67 FR 79198.

<sup>4</sup> For purposes of this rule, trust issued receipts or holding company depositary receipts (as defined in Interpretation .04 to CBOE Rule 1.1), as well as index portfolio receipts (as defined in Interpretation .02 to CBOE Rule 1.1) and index portfolio shares (as defined in Interpretation .03 to CBOE Rule 1.1), are all included within the meaning of the term "exchange-traded fund."

<sup>5</sup> While a few subsections of CBOE Rule 24.16 are phrased somewhat differently than their counterparts in CBOE Rule 24.17, they are

The proposed rule change would broaden CBOE Rule 24.17 to apply to market-makers in all index-related options, and delete the current text of CBOE Rule 24.16, while reserving the rule number for possible future use. The proposal also would amend CBOE Rule 8.16 and clarify that RAES eligibility under CBOE Rule 8.16 would apply only to option classes *other than* broad-based indexes and options on ETFs on broad-based indexes.

In addition, CBOE proposes to add to CBOE Rule 24.17 one set of provisions already present in the current CBOE Rule 8.16 in order to increase and make more consistent the enforcement of market-maker obligations in index-related options. These provisions currently exist as CBOE Rule 8.16(a)(iii) and the related Interpretations and Policies .01-.02. CBOE proposes to add the provisions to CBOE Rule 24.17(b)(vii) and Interpretations and Policies .03-.04. These provisions would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, 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.

The Commission believes that consolidation of CBOE's RAES eligibility rules for index-related options under one rule should clarify and simplify the treatment of index-related options under CBOE rules and help to

interpreted and applied by the CBOE as being equivalent. Compare CBOE Rules 24.16(a)(ii), (c)(i), and (d)(i) with CBOE Rules 24.17(b)(ii), (c)(i), and (d)(i) (enabling market-makers to "designate" that their RAES trades be placed into an individual, joint, or nominee account in which the market-maker participates); also compare CBOE Rule 24.16(a)(iii) with CBOE Rule 24.17(b)(ii)-(iv) (establishing requirements for personally logging onto RAES and remaining in the trading crowd while logged in.)

<sup>6</sup> In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Attorney, Division, Commission, on February 4, 2003.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).