

to include TheStreet.com, Inc. in the disclaimer provisions in Amex Rule 902C, similar to other entities included in the provisions of Amex Rule 902C whose names are identified with various indices underlying options traded on the Amex. Notwithstanding the change in the name of the Index, the Index will continue to be maintained in accordance with all of the terms set forth in the original proposal. The Amex will continue to have sole discretion with respect to all final determinations concerning adjustments to the Index and its components including the replacement of any component, although the Amex may, from time to time, consult with TheStreet.com, Inc. in connection with the Exchange's maintenance of the Index.

2. Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5)⁸ in particular in that 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 facilitating transactions in securities, and 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

The Exchange 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 Amex filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3)

does not become operative for 30 days from February 4, 1999, the date on which it was filed, and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. At any time within 60 days of the filing of the 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 the 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, N.W., Washington, D.C. 20549. 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, in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. Amex-99-06 and should be submitted by March 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41124; File No. SR-Amex-99-04]

Self-Regulatory Organizations; Notice of Filing an Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Revising the Weighting Methodology of The Inter@ctive Week Internet Index

March 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 8, 1999, the American Stock Exchange LLC ("Exchange" or "Amex") 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 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 seeks to revise the weighting methodology of the Inter@ctive Week Internet Index ("Index"), a stock index jointly developed by the Exchange and Inter@ctive Week, a biweekly magazine published by Inter@ctive Enterprises LLC. The Index measures the performance of stocks (or ADRs thereon) of companies with business directly related to the internet. The Exchange's proposal would revise the Index by changing it from a market capitalization weighted index to a modified market capitalization weighted index.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In 1995, the Exchange received Commission approval to list and trade options on the Index.³ The Index currently consists of the stocks of fifty companies⁴ involved in the following industries: internet service providers, on-line service companies, internet tool developers, multimedia publishers, networking companies, videoconferencing companies, interactive television companies, software technology developers, and computer manufacturers. Each of the component securities trades on the Exchange, the New York Stock Exchange, or through the facilities of the Nasdaq Stock Market as national market securities. The Exchange believes that options on the revised Index will provide investors with a low-cost means to participate in the performance of the internet industry and an opportunity to hedge against the risk of investing in the industry.

Since the trading of options on the Index began in 1995, several component stocks have become more heavily weighted due to increases in their stock prices. Therefore, the Exchange seeks to revise the weighting methodology of the Index from market capitalization weighted to modified market capitalization weighted. The Exchange believes the change in weighting methodology will make options on the Index more attractive to investors because the revised Index will be less concentrated in relatively few component stocks.

In addition, the Exchange has represented that with the exception of the modified market capitalization weighting methodology, the proposal meets all the criteria set forth in Exchange Rule 901C, Commentary .02 and the Commission's order approving that rule.⁵

a. Index calculation. 1. Current methodology. The Index currently is calculated using a market capitalization weighted methodology; specifically, the Index value is calculated by multiplying the primary exchange regular way last sale price of each component stock by its number of shares outstanding, adding the sums, and dividing by the current index divisor.

2. Proposed methodology. The Exchange proposes to use a modified market capitalization weighted methodology for the Index. Similar to the methodology currently used, the Index value will be calculated by multiplying the primary exchange regular way last sale price of each component stock by its *adjusted* number of shares outstanding, adding the sums, and dividing by the current index divisor. The weighting of the component stocks will be based on their market capitalizations and adjusted number of shares outstanding, subject to the following diversification requirements: (1) the weight of any single component stock may not account for 25% or more of the total value of the Index; (2) the five highest component stocks in the Index may not in aggregate account for more than 50% of the weight of the Index; and (3) the aggregate weight of those component stocks which individually represent less than 5% of the total value of the Index must account for at least 50% of the total Index value.

To ensure these diversification requirements are observed when the Exchange rebalances the Index each quarter (on or around the third Friday in March, June, September, and December), the Exchange will take into account component changes and scheduled share adjustments and also will adjust the weights of the component stocks according to the three "Rules" discussed below. The application of the Rules yields an adjusted share weight for the component stocks; this adjusted share weight is used to calculate the Index.

A. Rule 1: Reweighting of Index due to single component stock exceeding 20% of the total Index value. If the weighting of any component stock exceeds 20% of the total weighted value

of the Index, then all stocks having weightings greater than 15% of the Index will be reduced in weight so that each represents 15% of the total weighted value of the Index. The aggregate amount by which each component stock is reduced (*i.e.*, the amount exceeding 15%) will be redistributed proportionately across the remaining component stocks that have weightings less than 15% of the total weighted value of the Index. If this redistribution causes any other component stock to have a weighting that exceeds 15%, the weighting of that component stock also will be reduced to 15% of the total Index value and the excess will be redistributed proportionately across other component stocks that have weightings less than 15% of the total weighted value of the Index.

Exhibit B to the Exchange's proposal demonstrates that the application of Rule 1 to the Index as of January 15, 1999, would cause the weighting of Cisco Systems to drop from 31.84% to 15%. The redistribution of the "excess" weight of Cisco Systems (approximately 16.84%) across the remaining 49 Index components with weights less than 15% would cause America Online to also exceed 15%. As a result, America Online would likewise be capped at 15% and its excess weight would be distributed across the remaining 48 Index components.

B. Rule 2: Reweighting of Index due to five largest component stocks exceeding 50% of the total Index value. If the aggregate weight of the five largest component stocks (following any necessary adjustments made according to Rule 1) is greater than 50% of the total weighted value of the Index, then the weight of each of the five largest stocks will be reduced proportionately so that the aggregate weight of those five component stocks will amount to 45% of the total weighted value of the Index. The amount by which the aggregate weight of the five largest stocks exceeds 45% will be redistributed proportionately to those stocks which are not among the five largest component stocks. If because of this redistribution the weight of any component stock exceeds the lesser of (i) 4.0%, and (ii) the scaled down weight of the fifth largest stock, then the weight of that component stock will be reduced to equal the lesser of 4.0% and the scaled down weight of the fifth largest stock. The excess weight will be allocated to the remaining component stocks until amount has been redistributed.

Exhibit B to the Exchange's proposal demonstrates that the application of

³ See Securities Exchange Act Release No. 36163 (August 29, 1995), 60 FR 45750 (September 1, 1995).

⁴ Exhibit B to the Exchange's proposed rule change identifies the fifty companies making up the Index and lists them according to Index weightings. The companies are: Cisco Systems, America Online, Sun Microsystems, Yahoo!, Amazon.com, Qwest Communications International, Ascend Communications, 3Com, Level 3 Communications, At Home, eBay, Network Associates, Novell, Newbridge Networks, Netscape Communications, Intuit, E Trade Group, QUALCOMM, CMGI, Sterling Commerce, Inktoni Corporation, Excite, Adobe Systems, Network Solutions, Silicon Graphics, MindSpring Enterprises, broadcast.com, Infoseek, Earthlink Network, USWeb, GeoCities, Check Point Software Technologies, Cabletron Systems, Verisign, RealNetworks, PSINet, Macromedia, CheckFree Holdings, DoubleClick, CNET, Security Dynamics, ONSALE, BroadVision, Pairgain Technologies, SportsLine USA, Open Market, Harbinger, CyberCash, Spyglass, and VocalTec Communications.

⁵ Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

Rule 2 to the Index as of January 15, 1999, would cause the weightings of Cisco Systems and America Online to each drop from 15% to 12.67%, the weighting of Sun Microsystems would drop from 9.69% to 8.19%, the weighting of Yahoo! would drop from 7.93% to 6.70%, and the weighting of Amazon.com would drop from 5.63% to 4.76%. The second element of Rule 2 would cause the weightings of Qwest Communications International, Ascend Communications, 3Com, and Level 3 Communications to each change to 4.00%.

C. Rule 3: Reweighting of Index if more than 45% of the total Index value is comprised of stocks with weightings greater than 4.5%. If the aggregate weight of stocks having weightings of more than 4.5% of the total weighted value of the Index (*i.e.*, the "Large Stocks") is greater than 45% of the total Index value, then the weight of those component stocks will be scaled down proportionately to represent in aggregate 40% of the total weighted value of the Index. The amount by which these Large Stocks in aggregate exceed 40% will be redistributed proportionately to those stocks having weightings less than 4.5% of the total Index value. If because of this redistribution the weight of any component stock exceeds the lesser of (i) the weight of the smallest Large Stock, and (ii) 4.5%, then the weight of that component stock will be set to equal the lesser of the weight of the smallest Large Stock and 4.5%. The excess weight will be allocated to the remaining component stocks until the entire amount has been redistributed.

Because the component stocks having weightings of more than 4.5% do not in the aggregate represent more than 45% of the total weighted value of the Index, Rule 3 is not applicable. Therefore, as of January 15, 1999, the weightings of all component stocks would remain unchanged from the weightings derived from Rule 2.

3. Compliance with maintenance criteria. Exchange Rule 901C, Commentary .01, which requires that at least 90% of the subject index's numerical value be accounted for by stocks that meet the criteria and guidelines set forth in Exchange Rule 915, will continue to apply to the revised Index. The Exchange shall not open for trading any additional option series if the Index fails to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in writing with the Exchange's determination, or unless the continued listing of the Index option

has been approved by the Commission pursuant to Section 19(b)(2) of the Act.⁶

4. Index split. The initial value of the revised Index will be set at approximately $\frac{1}{3}$ the value of the market capitalization version of the Index at that time (*i.e.*, the Exchange will split the Index 3:1 when options on the revised Index are introduced). Similar to other stock index values published by the Exchange, the value of the revised Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

5. Calculation and maintenance of Index. Like the current version, the revised Index will be calculated and maintained by the Exchange. A committee consisting of two representatives from the Exchange, two representatives from Inter@ctive Week, and one representative from the internet industry will be available to advise the Exchange when, pursuant to Exchange Rule 901C(b), the Exchange substitutes stocks, or adjusts the number of stocks included in the Index, based on changing conditions in the internet industry or in the event of certain types of corporate actions such as a merger or takeover which warrant the removal of a component stock from the Index. The Exchange anticipates that the committee will meet on a quarterly basis to review possible candidates for removal from or inclusion in the Index, which will be publicly announced as far in advance of the occurrence as practicable. In selecting stocks to be included in the Index, the Exchange, in conjunction with the committee, will be guided by a number of factors including market value of outstanding shares, trading activity, and the criteria in Exchange Rule 901C, Commentary .02.

b. Phase-out of option contracts based on existing capitalization weighted index. Upon issuance of a release regarding this proposed rule change, the Exchange will provide for the phase-out of all outstanding option contracts based on the existing market capitalization weighted version of the Index. In particular, the Exchange will assign a new symbol to all outstanding Index option series and will prohibit the opening of any additional new series that are based on the market capitalization weighted version of the Index. Further, the Exchange will assign the existing symbol (IIX) to the modified market capitalization weighted version of the Index; this will allow the introduction of series based on the revised version of the Index. Lastly, the Exchange will issue an Information

Circular describing the change in weighting methodology and other relevant information concerning the revised Index.

c. Compliance with Commission's previous approval order. With the exception of the revisions set forth above, the Exchange does not seek to alter or amend any term or condition of the previous Commission order that approved the listing and trading of options on the Index. Specifically, the Exchange represents that the revised Index and all Exchange-listed option contracts on the revised Index shall continue to comply with the requirements and conditions in the Commission's previous approval order, including for example, the requirements set forth under the headings: (i) Eligibility Standards for Index Components, (ii) Maintenance of the Index, (iii) Expiration and Settlement, and (iv) Exchange Rules Applicable to Stock Index Options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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

The Exchange does not believe 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

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from February 8, 1999, the date on

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

which it was filed; and because the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of the 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. 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 persons, 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchanger. All submissions should refer to File No. SR-Amex-99-4 and should be submitted by March 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-5722 Filed 3-8-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41121; File No. SR-CBOE-98-35]

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 Order Book Rates and Floor Brokerage Subsidies

February 26, 1999.

I. Introduction

On July 27, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposal to allow CBOE market-makers in a trading crowd to subsidize the limit order book rate and the activity of stationary floor brokers who represent orders in that crowd. The proposed rule change was published for comment in the **Federal Register** on September 16, 1998.³ The Commission received one comment letter on the proposal.⁴

On February 26, 1999, CBOE filed Amendment No. 1 to the proposed rule change.⁵ This notice and order approves the proposed rule change, as amended, and seeks comments from interested persons on Amendment No. 1 to the proposal.

II. Description of the Proposal

A. Background

Many options traded on CBOE are traded in crowds where the quotes are established by competing market-

makers.⁶ In CBOE's competing market-maker crowds, the agency function is performed by OBOs, who are CBOE employees, and floor brokers, including stationary floor brokers ("SFBs") who remain at stations where the option classes are traded. An OBO maintains the limit order book in each options class, and generally only limit orders away from the current market price may be placed with an OBO. Orders in which any CBOE member or another broker-dealer has an interest may not be placed with an OBO. Orders that cannot be placed with an OBO can be routed through CBOE's order routing system to the floor terminal of an SFB. Other exchanges, such as the American Stock Exchange, have a specialist system that is akin to CBOE's DPM system. Unlike CBOE's market-maker crowds, DPMs and specialists can serve both the agency and principal functions.

As a result of the differences between competing market-maker crowds and specialist systems, the OBO's rates at CBOE compete with rates charged by specialists with respect to orders that can be placed with an OBO, and the SFB's rates at CBOE compete with the rates of specialists with respect to most other agency orders. CBOE contends that specialists can reduce their brokerage rates to attract order flow and can offset such reductions through revenue they earn from the principal part of their business. Because CBOE's market-makers (which cannot represent agency orders) and SFBs (which do not have a proprietary business) lack the flexibility over pricing enjoyed by specialists, CBOE developed the current proposal to allow CBOE and its member firms to better compete with other exchanges in floor brokerage and order book rates.

B. General Description of the Proposal

The Exchange is proposing a new Rule 2.40 that would allow the Exchange to impose a fee on market-makers ("Surcharge") for contracts traded by market-makers in a particular option class. This fee, not to exceed \$0.25 per contract,⁷ will be collected by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 40419 (September 9, 1998), 63 FR 49619.

⁴ Comment Letter, from the United States Department of Justice, dated October 21, 1998 ("DOJ Letter"). CBOE submitted a letter responding to the DOJ Letter. See letter from William Brodsky, Chairman, CBOE, to Richard Lindsey, Director, Division of Market Regulation ("Division"), SEC, dated December 17, 1998 ("CBOE Response Letter").

⁵ See letter from Timothy Thompson, Director—Regulatory Affairs, to Michael Walinskas, Deputy Associate Director, Division, SEC, dated February 26, 1999 ("Amendment No. 1"). Among other things, in Amendment No. 1 CBOE proposes to cap the Market-Maker Surcharge at \$0.25 per contract, to grant the authority to impose the Surcharge to the appropriate Floor Procedure Committee rather than to the Resident Market-Makers as was originally proposed, and to operate the proposal as a pilot program through March 31, 2000.

⁶ Other options on CBOE are traded in a Designated Primary Market-Maker ("DPM") system. The DPM functions in approved classes of options as a market-maker, floor broker, and in the place of the Order Book Official ("OBO"). See CBOE Rules Chapter VIII, Section C: Modified Trading System. This proposal does not apply to DPM option classes. See Amendment No. 1, *supra* note 5.

⁷ See Amendment No. 1, *supra* note 5. Bids and offers in options series trading below \$3 are expressed in sixteenths of a dollar, i.e. \$0.0625. Because standard options contracts have a multiplier of 100 (i.e., they represent interest in 100 shares of the underlying security), the value of the minimum spread between any option contract

Continued

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 200.30-3(a)(12).