

and immediately following each annual reconstitution of the Industrial Holdings Index, no single stock or group of stocks will likely dominate the Industrial Holdings Index. Finally, the issuers of the underlying securities comprising the Industrial Holdings Index, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Industrial Holdings Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Industrial Holdings Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publications of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex and NYSE. In determining to grant the accelerated approval for good cause, the Commission notes that the Industrial Holdings Index is a portfolio of highly capitalized and actively traded securities similar to hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, Industrial Holdings Notes will be listed pursuant to existing hybrid security listing standards as described above. Moreover, the Index's applicable equal-dollar weighting methodology is a commonly applied index calculation need. Based on the above, the Commission finds, consistent the Section 6(b) of the Act,²¹ that there is good cause for accelerated approval of the product.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-Amex-2001-40), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44490; File No. SR-CBOE-2001-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Automatic Step-up Based on Order Size Parameters

June 28, 2001.

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 June 11, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under rule 19-4(f)(6).³ 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 allow the appropriate floor procedure committee ("FPC") to establish the size of the automatic step-up amount applicable to orders entered through the Exchange's Retail Automatic Execution System ("RAES") based upon order size parameters. 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 basic 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 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

Interpretation .02 to CBOE Rule 6.8 establishes the process for the automatic execution of orders through RAES when the Exchange's best bid or offer is inferior to that of another market. Under this provision, the Exchange automatically fills any equity option order submitted through RAES at any better price being quoted in another market, so long as the price on the away market is better by no more than one tick ("automatic step-up").⁴ If the price on the away market is better by more than the automatic step-up amount (*i.e.*, more than one-tick), the order is rerouted to the DPM for non-automated handling.⁵ The purpose of this rule filing is to provide for the step-up parameters to be based upon order size ("order size parameters").

Under the proposal, the appropriate FPC shall have the authority to establish the size of the step-up amount based upon order size parameters. This enhancement will allow automatic execution on RAES at the NBBO when the price displayed on a competing market is within a designated number of ticks of the price displayed by CBOE, provided the size of the order falls within the specified order size parameters. For example, the order size parameters might be established such that orders of 1-3 contracts receive 3-tick step-up, orders of 4-6 contracts receive 2-tick step-up, orders of 7-10 contracts receive 1-tick step-up, and orders of 11 or more contracts receive no step-up.⁶ If the CBOE price is not within the designated step-up amount to

⁴ CBOE Rule 6.42 establishes the minimum trading increments for bids and offers.

⁵ The Commission approved the CBOE automatic step-up plan in Securities Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (order approving SR-CBOE-98-13) ("automatic step-up Approval Order"). Pursuant to CBOE Rule 6.42, the trading increment for option series quoted at or below \$3 per contract is 5 cents. For option series quoted above \$3, the trading increment shall be 10 cents.

⁶ In this instance, orders of 1-3 contracts would be executed within RAES at the NBBO provided the price displayed on CBOE is within 3-ticks of the price displayed by the competing market.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

the away market price, the order shall be routed for manual handling.

As discussed above, the appropriate FPC shall have the authority to establish the size of the step-up amount based upon order size parameters. The FPC shall determine which classes or series are eligible for step-up and, correspondingly, may establish the amount of the step-up. In considering which classes or series are eligible for step-up, the FPC may consider such factors as the open interest in the requested option, the average daily volume, customer requests, and any other factors the FPC deems appropriate. While the FPC will have the ability to vary the order size parameters by class or series, it also will have the authority to mandate that a minimum step-up amount be applicable either on a floor-wide or class-by-class basis. Consistent with current Interpretation .02 to CBOE Rule 6.8, the appropriate FPC shall also have the authority to designate or remove classes or series from the list of those eligible for step-up enhancement. Finally, the Exchange will publish a list of all option classes eligible for step-up enhancement in an Informational Circular distributed to members.

The Exchange believes that allowing the FPC to increase the amount of the automatic step-up amount will promote competition. As the Commission noted in the automatic step-up Approval Order:

By automating the execution of eligible retail orders for equity options through the RAES Auto-Step-Up, the amended Interpretation and Policy. 02 should help to insure that investors receive prompt, automatic execution of RAES orders at the best available prices, even if those prices are being quoted in a market other than the Exchange, when the better prices in other markets do not improve on the CBOE's market by more than one tick. This proposal should minimize the delay inherent in manually handling orders in this circumstance, and thereby reduce the risk to investors that, as a result of an adverse move in the market while their orders are being manually handled, they may receive an inferior execution.⁷

This proposal will authorize the appropriate FPC to increase the step-up amount by more than 1-tick for public customer orders within established order size parameters. As such, investors not only will have the opportunity to receive better-priced executions, but they also will have the opportunity to receive more expedient executions.

⁷ See note 5, *supra*.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5),⁹ which provides that the rules of an exchange must be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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 Exchange 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the 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; and (3) does not become operative for 30 days from the date of the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹²

At any time within 60 days of the filing of such proposed rule change, the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78(f)(b)(5).

¹⁰ 15 U.S.C. 78f(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² The Commission has determined to waive the requirement the CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

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.

The Exchange has requested that the Commission accelerate the operative date of the proposal. The Commission finds good cause for accelerating the operative date of the proposed rule change. The Commission notes that it approved a similar proposal filed by the American Stock Exchange ("Amex").¹³ Approval of this proposal on an accelerated basis will enable the CBOE to compete on an equal basis with other exchanges and thus is consistent with Section 6(b)(8) of the Act.¹⁴

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-2001-32 and should be submitted by July 27, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,

Secretary.

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¹³ See Securities Exchange Act Release No. 44013 (February 28, 2001), 66 FR 13816 (March 7, 2001) (approving SR-Amex-01-05).

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 17 CFR 200.30-3(a)(12).