

an Exchange Traded Funds ("ETFs"). In addition, the letter "V" would be used to identify proprietary transactions for non-member broker dealers that are not acting as a competing market maker. Finally, the letter "G" would be used to identify Registered Equity Trader, Registered Equity Market Maker and Registered Option Trader market maker transactions in the equities and ETFs in which they are registered as a market maker regardless of the clearing member, and Registered Option Trader and option specialist transactions in an underlying Paired Security if the underlying Paired Security is an equity other than an ETF. The Exchange proposes these changes to facilitate the billing of transaction fees. No other change would be made to Rule 719.

#### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 and dealers.

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

The proposed rule change will impose no 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 foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and paragraph (f)(1) and (3) of Rule 19b-4<sup>8</sup> thereunder because it constitutes a states policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and is concerned solely with the

administration of the self-regulatory organization. At any time within 60 days of the filing of such 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.<sup>9</sup>

### 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 Amex. All submissions should refer to File No. SR-Amex-2002-65 and should be submitted by September 27, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46435; File No. SR-CBOE-2002-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Facilitate Trading of Fixed-Income Index Portfolio Shares and Options Overlying Those Shares

August 29, 2002.

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 August 23, 2002, 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. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to amend its rules to facilitate trading of fixed-income Index Portfolio Shares and options overlying those shares. The text of the proposed rule change is below. New language is in *italics*; deleted language is in brackets.

\* \* \* \* \*

#### Rule 1.1 Definitions

(a)-(yy) No change.  
 . . . Interpretations and Policies:  
 .01-.02 No change.  
 .03 The term "Index Portfolio Shares" or IPSs means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks *or fixed income securities* designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index *or fixed income securities index*; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(1) and (3).

<sup>9</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on August 21, 2002, the date the Exchange filed Amendment No. 1.

<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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

deposit of specified number of shares of stock and/or a cash amount, *or a specified portfolio of fixed income securities and/or a cash amount*, with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash, *or a specified portfolio of fixed income securities and/or cash* with a value equal to the next determined net asset value.

.04 No change.

\* \* \* \* \*

### Rule 5.3 Criteria for Underlying Securities

(a)–(b) No change.

. . . Interpretations and Policies:

.01–.05 No change.

.06 Securities deemed appropriate for options trading shall include shares or other securities (“Units”) that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as “national market” securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities); provided that all of the following conditions are met:

(A) any non-U.S. component [stocks] *securities* of the index or portfolio on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(B) [stocks] *securities* for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;

(C) [stocks] *securities* for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; and

(D) either (x) the Units meet the criteria and guidelines set forth in Rule 5.3 and Interpretation and Policy .01 thereunder, or (y) the Units are available for creation or redemption each business day from or through the investment company in cash or in kind

at a price related to net asset value, and the investment company is obligated to issue Units in a specified aggregate number even if some or all of the securities required to be deposited have not been received by the investment company, subject to the condition that the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the investment company, all as described in the investment company prospectus.

.07–.09 No change.

### 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 CBOE 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 CBOE 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

The purpose of the proposed rule change is to amend the definition of Index Portfolio Shares (“IPSs”) in CBOE’s rules to reflect that IPSs may be based on fixed-income securities indexes. This proposed rule change corresponds to an American Stock Exchange (“Amex”) rule change filing recently approved by the Commission.<sup>5</sup> Thus, CBOE is proposing to modify Rule 1.1, Interpretation and Policy .03 to mirror the Amex changes to Amex Rule 1000A.

CBOE also seeks to clarify that certain listing requirements for options overlying IPSs, or exchange-traded funds (“ETFs”) generally, should apply to options overlying ETFs that are based on fixed income securities indexes. Currently, CBOE Rule 5.3, Interpretation and Policy .06, governing the listing of ETF options, provides that, among other things, the following conditions must be met to list options on an ETF:

(A) any non-U.S. component stocks of the index or portfolio on which the

Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(B) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and

(C) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

While a fixed-income ETF technically meets (A)–(C) above, CBOE believes those provisions were meant to apply to any foreign *securities*, not just foreign *stocks*. Thus, CBOE proposes to make those criteria applicable to ETFs based on any securities—which would include fixed income ETFs.

##### 2. Statutory Basis

The Exchange believes that clarifying its rules governing IPSs and options on IPS and ETFs will benefit investors. Accordingly, the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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

The 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 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 CBOE has designated that the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

<sup>5</sup> See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (File No. SR-Amex-2001-35).

<sup>6</sup> 15 U.S.C. 78f(b).

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

as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has 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. Therefore, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under rule 19b-4(f)(6)<sup>10</sup> does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in rule 10b-4(f)(6)(iii).<sup>11</sup> The Commission believes that waiving the 30 day operative delay is consistent with the protection of investors and the public interest and, therefore, has determined to allow the proposed rule change to become effective and operative as of the date of filing with the Commission.<sup>12</sup>

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 20549-0609. 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-47 and should be submitted by September 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46436; File No. SR-CHX-2002-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by The Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders and Execution Prices

August 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice hereby is given that on July 11, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On August 12, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 27, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>13</sup> 17 CFR 200.30(a)(12).

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

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

<sup>3</sup> See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 9, 2002 ("Amendment No. 1").

<sup>4</sup> See letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 23, 2002 ("Amendment No. 2").

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are bracketed.

#### Article XX

#### Guaranteed Execution System and Midwest Automated Execution System

RULE 37(a). Guaranteed Executions.

\* \* \* \* \*

1. Eligible Orders. Specialists must accept and guarantee execution of all agency *market and marketable limit* orders [in Dual Trading System issues] from 100 *through* [up to and including] 5099 shares in accordance with this rule. [Specialists must accept and guarantee execution of all agency market orders or marketable limit orders in NASDAQ/NM Securities from 100 up to and including 5099 shares in accordance with this rule. Specialists must accept all agency limit orders in NASDAQ/NM Securities from 100 up to and including 10,000 shares for placement in the limit order book.]

2. *Market and Marketable Limit Orders. Any market or marketable limit order executed automatically shall be executed at the BBO price or better. With respect to any market or marketable limit order not executed automatically, a specialist shall be obligated to either (a) manually execute such order at a price and size equal to or better than the NBBO price and size at the time the order was received; or (b) act as agent for such order in seeking to obtain the best available price for such order on a marketplace other than the Exchange, using order routing systems where appropriate.* [Subject to the requirements of the short sale rule and the limitations of Rule 43(d) of this Article, all agency market orders must be filled on the basis of the size and price associated with the best bid among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote ("ITS Best Bid") on a sell order or the size and price associated with the best offer among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the ITS/CAES quote ("ITS Best Offer") on a buy order (the "ITS Best Bid" and "ITS Best Offer" are collectively referred to as the "ITS

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes of accelerating the implementation of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).