

19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-35 and should be submitted by November 12, 1996.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to amend its firm facilitation exemption is consistent with the requirements of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-CBOE-96-35), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37815; File No. SR-CBOE-96-61]

#### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Opening of New Series of OEX Index Options**

October 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 9, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange proposes to amend Rule 24.9, Interpretation and Policy .01 regarding the listing of additional series of index options on the Standard & Poor's 100 ("S&P 100" or "OEX") Index options in order to take into account the significantly increased levels of the S&P 100 since the listing procedures were implemented. 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of 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. The purpose of the proposed rule change is to amend the procedures for listing additional series of index options on the S&P 100 Index (OEX<sup>®</sup>) in order to take into account the significantly increased levels of the S&P 100 Index since these procedures were first put in place. Under existing Interpretation and Policy .01 under Exchange Rule 24.9, when the Exchange introduces trading in a new expiration month for a class of OEX options, it may initially list series of options with strike

prices at four strike price intervals above and four strike price intervals below the current value of the Index. Subsequently, as the value of the Index moves up or down, the Exchange may list additional series of options (up until the fifth day prior to expiration), such that under ordinary circumstances there may be available for trading series of OEX options with a given expiration date having strike prices at up to five strike price intervals above and up to five strike intervals below the current value of the Index. In unusual market conditions (such as at times of heightened volatility) additional series may be added at up to six strike price intervals above and six strike price intervals below the current value of the Index. Of course, series of options previously opened continue to be available, so that there may be more than the stated number of series traded at strike price intervals opposite to the direction in which the index value has moved.

For example, if a new expiration month is introduced in an OEX option at a time when the current value of the S&P 100 Index is 598, so long as the strike price interval for OEX options remains at 5 points, series of OEX options will be available at 580, 585, 590 and 595 (four intervals below the current Index value) and at 600, 605, 610, and 615 (four intervals above the current Index value). If the value of the Index then moves to 608, under normal conditions the Exchange would be able to add series with strike prices of 620, 625 and 630, which, together with the 610s and the 615s, provide five series above the current level of the Index. In unusual market conditions, the Exchange could add sixth series with a strike price of 635. In this example, there would continue to be traded six series with strike prices below the current level of the Index (that is, the 580, 585, 590, 595, 600 and 605 series).

When the current methodology for adding series of OEX options was adopted in 1992, the S&P Index was at 380. This meant that five intervals (25 points) constituted over 6½% of the value of the index, and six intervals (30 points) constituted almost 8% of the index value.<sup>3</sup> Since that time, the value of the S&P 100 Index has increased considerably, to the point where it has recently exceeded 670. At this level, five strike price intervals constitutes less

<sup>3</sup> This was consistent with the prior methodology for adding new series of OEX options, which permitted up to four strike price intervals and was adopted at a time when the value of the index was 265, thus allowing OEX options to be added up to 7½% away from the market.

<sup>21</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>22</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.

than 3¾%, and six intervals less than 4½%, of the value of the Index.

Application of the current rule, together with a sustained bull market, has led to an absence of OEX call series that are more than nominally out-of-the-money, since even under unusual market conditions, which the Exchange has determined now exist, an OEX call can be only a little over 4% out-of-the-money when first opened for trading, as contrasted with approximately 8% out-of-the-money at times when the level of the Index was lower. And, so long as the Index continues to move in a generally upward direction, out-of-the-money calls become less out-of-the-money with the passage of time. The adverse consequences of this trend is exemplified in at least three ways: (1) the number of OEX calls eligible for trading through the Exchange's automatic execution system (RAES) is limited; (2) institutional customers, which often apply specific parameters to conservative options strategies that involve writing out-of-the-money OEX calls, are limited in their ability to pursue these strategies; and (3) retail customers have fewer low-priced OEX calls available to trade. Each of these negative consequences is discussed in turn below.

(1) *Fewer OEX series on RAES.* The guidelines followed by the OEX Floor Procedure Committee in designating series of OEX options as eligible for trading on RAES provide that up to eight series in each of the two near term expiration months may be so designated, provided the option in any designated series is priced below \$7. Historically, when the index was at a lower level and thus further out-of-the-money series were available as illustrated above, customers have had as many as sixteen series<sup>4</sup> of RAES-eligible OEX calls to choose from. Recently, however, there have been as few as six RAES-eligible OEX calls, four in the near term month and only two in the next-out expiration. This, of course, reflects that at only 4% out-of-the-money an OEX call with any significant time remaining until expiration will have a price above the \$7 cutoff.

(2) *Institutional covered writing curtailed.* The Exchange has recently observed a decline in institutional OEX activity. When looking into possible causes, the Exchange learned that some institutional customers follow strategies involving the writing of out-of-the-

money OEX calls as a hedge against a diversified stock portfolio. In some cases, these strategies require that the calls written must be at least 5% out-of-the-money. Obviously, if the furthest out-of-the-money OEX call is only 4% out-of-the-money, this strategy cannot be pursued.

(3) *Lower-priced OEX series unavailable for retail customers.* The Exchange has long noticed that OEX order flow from retail customers is concentrated in options priced below \$5, and that when the number of available lower priced options increases, so does retail order flow. Under current index levels in light of the existing restrictions under Interpretation and Policy 24.9.01, there are a few low price OEX call options available with any significant time remaining before expiration, such that at times there are no OEX calls available at less than \$6 premiums having more than two months remaining until expiration. For example, recently the least expensive third month OEX call was offered at 6⅞, and the least expensive fourth month call at 9½. The effect of this is to preclude retail investors from participating in the OEX call market, except at higher than desired price levels.

In response to these concerns, CBOE is now proposing to change the measure of when additional series of OEX options may be traded from the current inflexible test based on the number of strike price intervals away from the market to a more flexible test which measures the extent to which an away from the market series may be opened by reference to a percentage of the current value of the index. Based on historical patterns, it is proposed that under ordinary conditions the Exchange should be able to add additional series of OEX options that are as much as 8% away from the market, and under unusual conditions it should be able to add series that are as much as 10% away from the market.<sup>5</sup> Applying these percentages to current index levels, there could be as many as ten series<sup>6</sup> of OEX options above and below the

market under normal circumstances, and up to 13 series in unusual circumstances.

The number of additional series that will result from this proposed rule change, which affects OEX options only, will not be significant. For this reason, CBOE does not believe that the proposed change raises any capacity issues. In any event, with prior notice CBOE would continue to have the ability to delist series that become inactive if the market were to move away from exercise price levels at which the series were previously opened. Indeed, CBOE has recently acted to delist over 400 inactive series on this basis.

2. *Statutory basis.* By responding to the current historically high values of the S&P 100 Index in a manner that will increase the availability to investors of lower priced OEX options, the proposed rule change is consistent with the provisions of Section 6 of the Act, and Section 6(b)(5) in particular, in that it will promote just and equitable principles of trade, will protect investors and the public interest, and will remove impediments to and perfect the mechanisms of a free and open market.

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

The Exchange states that it believes that 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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change*

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. 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 and, in particular, with the requirements of Section 6(b) of the Act. Specifically, the Commission believes that the proposal will enable the CBOE to respond to changing market conditions, and list index options series that provide market participants with an effective means to transfer risk and implement their trading strategies. The Commission believes that the discretion to list

<sup>4</sup> The proposed rule change as originally filed incorrectly states that in the example above, customers have had as many as fourteen series of RAES-eligible OEX calls to choose from. Telephone conversation between Tim Thompson, CBOE, and John Ayanian, SEC on October 11, 1996.

<sup>5</sup> This proposed test would apply only to OEX. All other index options are currently subject to Interpretation and Policy .05 under Rule 24.9, which applies a percentage test, subject to a maximum number of points, to adding away from the market series. Under that test, for all but long term options, the percentages are 15% under normal conditions and 30% where there is "demonstrated customer interest" in additional strike prices.

<sup>6</sup> The proposed rule change, as originally filed, incorrectly states that there would be eight strikes at current values. Telephone conversation between Tim Thompson, CBOE, and Janice Mitnick, SEC on October 10, 1996.

additional series of index options will help to ensure the consistent availability of index options series tailored to meet the needs of investors during periods of market volatility. In addition, the Commission notes the CBOE's proposal is similar to Rule 24.9, Interpretation and Policy .05 which applies a percentage test, subject to a maximum of 15%, for adding away from the market series.<sup>7</sup> Further, the rule allows CBOE to use a maximum of 30% for adding series when there is "demonstrated consumer interest" in additional strike prices.<sup>8</sup> Finally, American Stock Exchange ("Amex") Rule 930C(b) allows the Amex to list additional series of the same class of index options as the numerical index value of the underlying stock index moves substantially from the initial exercise price or prices.

The Commission believes that the CBOE's proposal strikes a reasonable balance between accommodating the needs of market participants and avoiding the excessive proliferation of options series. In this regard, the proposal provides that the options price of each series of options opened for trading shall be reasonably related to the current value of the underlying index, as discussed below. The proposed rule change also allows the Exchange to open additional series of index options for trading only after a substantial movement in the value of the underlying index.<sup>9</sup>

The Commission believes that the change in the level of the S&P 100 Index since the series listing rules were put into place has affected the availability of series of options on the index. More specifically, CBOE states that when the methodology for adding series of options was adopted in 1992, the S&P 100 Index was at 380. At that time, the options available under normal market conditions, five intervals (25 points), constituted over 6½% of the value of the index. Further, the options available under the standard for unusual market conditions, six intervals (30 points), constituted almost 8% of the index value at the time the standards were implemented.

The S&P 100 Index has recently exceeded 670. Under the current standard, five strike price intervals constitute less than 3¾% of the index, and six intervals constitute less than 4½% of the value of the index. The proposed rule will permit the addition of options series at 8% away from the market and, under unusual market conditions, as much as 10% away from the market. Using current index levels, there could be as many as ten series of OEX options above and below the market under normal circumstances, and up to 13 series in unusual market conditions. The Commission believes that these requirements provide the Exchange with the flexibility to open additional index options series and, at the same time, appropriately limit the number of index options series that may be outstanding at any one time. In addition, the Commission notes that although the proposal permits the CBOE to open additional index option series, the CBOE retains the discretion to list fewer series than those allowed under the proposal.<sup>10</sup>

The CBOE has represented that due to the fact that this proposed rule change applies only to OEX options, the number of additional series will not be significant. The Options Price Reporting Authority has represented that CBOE's current system capacity is sufficient to meet the expected demands of the additional strike prices.<sup>11</sup> Nevertheless, the Commission requests that the CBOE monitor the volume of additional series listed as a result of this rule change and the effect of these additional series on the capacity of CBOE's, and OPRA's and vendors' automated systems. The Commission encourages the CBOE to exercise its available discretion when appropriate to delist inactive series that have no open interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Specifically, as stated above, the Commission previously approved a CBOE rule similar to the proposed rule,<sup>12</sup> and believes that the proposed rule change raises no new regulatory issues. Further, the Commission believes that the proposed rule will help the CBOE to accommodate the needs of investors by helping to ensure the availability of a

proper range of option strikes. Accordingly, the Commission believes, consistent with Section 6(b)(5) of the Act, that good cause exists to approve the proposed rule change on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 at 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-CBOE-96-61 and should be submitted by November 12, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-96-61) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret McFarland,  
*Deputy Secretary.*

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[Release No. 34-37818; File No. SR-NSCC-96-15]

#### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change to Process Corporate Reorganizations Involving Elections Through NSCC's Continuous Net Settlement System

October 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> notice is hereby given that on August 7, 1996, the National Securities Clearing Corporation ("NSCC") filed

<sup>7</sup> The 15% maximum applies to all index options (excluding OEX), but not to long term options. CBOE Rule 24.9, Interpretation and Policy .05. See Securities Exchange Act Release No. 31683 (December 31, 1992), 58 FR 3307 (order approving SR-CBOE-92-36).

<sup>8</sup> CBOE Rule 24.9, Interpretation and Policy .05. Again, this standard applies to all index options (except OEX), but not to long term options.

<sup>9</sup> The Commission notes, however, that the Exchange is not obligated to open new series every time the index value changes. Opening of new series must be done in a manner that is consistent with the maintenance of a fair and orderly market.

<sup>10</sup> See supra note 9.

<sup>11</sup> See Letter from Joe Corrigan, OPRA, to Mike Walinskas, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated October 11, 1996.

<sup>12</sup> Securities Exchange Act Release No. 31683 (December 31, 1992), 58 FR 3307 (approving CBOE-92-36).

<sup>13</sup> 15 U.S.C. § 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988)