

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 depository 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).

provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the proposal 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. The Commission believes that this should help to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, and do not simply stand there for the purpose of accepting RAES trades.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2002-49), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47308; File No. SR-NASD-2003-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent Nasdaq's Pilot Program That Makes Available Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

February 4, 2003.

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 January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal 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.<sup>5</sup> 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

Nasdaq proposes to make permanent its pilot program that makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. The text of the proposed rule change is available at Nasdaq 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, Nasdaq 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 Association 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

In October 1999, the Commission approved a pilot program ("Program") that made available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.<sup>6</sup> Under the original Program, Nasdaq provided, until 6:30 p.m., the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS").

In August 2002, Nasdaq modified the terminology applicable to the Program to reflect the pending introduction of Nasdaq's SuperMontage system.<sup>7</sup> Since its original approval, the Program has been extended numerous times and has operated continuously.<sup>8</sup> Nasdaq now

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

<sup>5</sup> Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR-NASD-99-57).

<sup>7</sup> See Securities Exchange Act Release No. 46398 (August 22, 2002), 67 FR 55290 (August 28, 2002)(SR-NASD-2002-114).

<sup>8</sup> See Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20,

proposes to make the Program permanent.

Nasdaq proposes no substantive or technical changes to the pilot program. Nasdaq's permanent after-hours program will operate in the same manner as the current Program. Like the pilot, the posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 p.m. Eastern Time will be entirely voluntary. Quotes entered after-hours will continue to be disseminated by Nasdaq via NQDS,<sup>9</sup> and Nasdaq's ACT system will continue to accept trade reports up to 6:30 p.m. Eastern Time. Nasdaq will also continue to disseminate transaction reports to the public via the SIP. The after-hours session will continue to operate under the following general terms and conditions as set forth in the Commission's original approval order of the pilot:

- Any Nasdaq market maker that wishes to post quotations and trade during the 4 p.m. to 6:30 p.m. time period shall be obligated to post firm two-sided quotations when opening and making its market but may thereafter enter or leave the market on the hour or half-hour up to 6:30 p.m.

- NASD member firms that do not wish to open their market and instead simply send customer or proprietary orders to other market participants for display and/or execution will likewise not be obligated to post firm two-sided quotes.<sup>10</sup>

- Regardless of an NASD member's quotation activity, all transactions in Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities executed between the hours of 9:30 a.m. and 6:30 p.m. Eastern Time must be reported to Act within 90 seconds.

- NASD members who participate in the after-hours session must operate in conformity with all NASD Rules except those that are limited by their express

1999)(SR-NASD-99-57); 42481 (March 1, 2000), 65 FR 12310 (March 8, 2000)(SR-NASD-2000-07); 43302 (September 19, 2000), 65 FR 57852 (September 26, 2002)(SR-NASD-2002-56); 43953 (February 12, 2001), 66 FR 10927 (February 22, 2001)(SR-NASD-2001-12); 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR-NASD-2002-29). The pilot is currently scheduled to terminate on January 31, 2003. See Securities Exchange Act Release No. 46532 (September 23, 2002), 67 FR 61367 (September 30, 2002)(SR-NASD-2002-118).

<sup>9</sup> The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor ("SIP") for full public dissemination.

<sup>10</sup> NASD market makers that do not elect to open their quotes would still be obligated to trade report transactions during the 4:00 p.m. to 6:30 p.m. time period consistent with current trade reporting rules.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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).