

### 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 that is 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-2003-06 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48059; File No. SR-CBOE-2003-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Disclaimers for Index Option Reporting Authorities

June 18, 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 May 16, 2003, 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 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 clarify the effect of certain disclaimers provided by the Exchange on behalf of index reporting authorities under CBOE Rule 24.14 ("Disclaimers"). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### Chapter XXIV

##### Index Options

##### Rule 24.14. Disclaimers

No reporting authority with respect to any index underlying an option traded on the Exchange, no affiliate of such reporting authority (each such reporting authority and its affiliates are referred to collectively as the "Reporting Authority"), and no other entity identified in this Rule makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any

opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract based thereon or for any other purpose. The Reporting Authority or any other entity identified in this Rule shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority or any other entity identified in this Rule does not guarantee the accuracy or completeness of such index, and opening, intra-day or closing value therefor, or any data included therein or related thereto. The Reporting Authority or any other entity identified in this Rule hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefor, any data included therein or relating thereto, or any option contract based thereon. The Reporting Authority or any other entity identified in this Rule shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract based thereon or arising out of any errors or delays in calculating or disseminating such index. The foregoing disclaimers shall apply to Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") in respect to the S&P Indexes, [S&P and Barra, Inc. in respect to the S&P 500/ Barra Growth Index and the S&P 500/ Barra Value Index, ]Frank Russell Company in respect to the Russell Indexes [2000 Index], [LIFFE Administration and Management in respect to the FT-SE 100 Index, ]The NASDAQ Stock Market, Inc. in respect to the Nasdaq [100 ]Indexes, Morgan Stanley Dean Witter & Co. Incorporated in respect of the Morgan Stanley [Multinational Company ]Indexes, Dow Jones and Company, Inc. in respect to the Dow Jones Averages and *any other*[the] Dow Jones [Equity REIT ]Indexes, [Lipper Analytical Services, Inc., Salomon Brothers, Inc. in respect to the Lipper-Salomon Indexes, and ]Goldman, Sachs & Co. in respect to the Goldman Sachs Indexes [Technology Indexes.]; *to the foregoing Reporting Authorities in respect to any other indexes for which they act as the designated Reporting Authority; [.] to the Exchange in respect to the indexes*

<sup>6</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.

for which it is the designated R[r]eporting A[a]uthority;[,] and to any other [index] R[r]eporting A[a]uthority in respect to any index for which it acts as such.

\* \* \* \* \*

## 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 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 CBOE currently lists and trades options on various indexes. Each index has a designated reporting authority, which is the institution or reporting service designated by the Exchange as the official source for routinely calculating the level of each respective index.<sup>3</sup> CBOE Rule 24.14 (the "Rule") sets forth certain disclaimers that are applicable to each reporting authority and its affiliates (collectively "Reporting Authority") with regard to those index options that are listed on or traded at the CBOE. For example, the Rule provides that no Reporting Authority makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract based thereon or for any other purpose.

Under CBOE Rule 24.14, certain indexes and their respective Reporting Authorities are specified by name as being covered by the disclaimer. However, the specification of certain Reporting Authorities or certain indexes within the Rule does not imply that a Reporting Authority or an index must be specified in the Rule to be covered by the disclaimer. The Rule currently contains a provision that makes the Rule applicable to all Reporting Authorities in respect to any index for which it acts

as such, whether or not that Reporting Authority or the index is specified in the Rule. Specifically, the Rule provides in part that it applies to any other index Reporting Authority in respect to any index for which it acts as such.

The CBOE proposes to clarify the Rule by providing language that expressly states that, where a Reporting Authority is specified in the Rule in relation to a specified index or indexes that is traded on the Exchange, the Rule also applies to that Reporting Authority in relation to indexes that are not specified in the Rule. The Exchange believes that this should clarify the purpose and effect of CBOE Rule 24.14.

Specifically, the proposed rule change will provide that the disclaimer will also apply to designated Reporting Authorities not mentioned in the Rule with respect to any other indexes that are traded on the Exchange. This added provision does not preclude the Exchange from adding specific Reporting Authorities or specific indexes to CBOE Rule 24.14 in the future.

Additionally, the CBOE proposes to delete references to certain indexes that are no longer traded on the CBOE, to update changes in company names where appropriate, and to refer to all indexes related to certain Reporting Authorities that are specified within the rule text and that trade on the CBOE; specifically, by referencing the S&P indexes, Russell indexes, Morgan Stanley Dean Witter indexes.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,<sup>4</sup> in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

### 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 that is 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

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>5</sup> and Rule 19b-4 (f)(1) thereunder.<sup>6</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 the CBOE.

All submissions should refer to the File No. SR-CBOE-2003-21 and should be submitted by July 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>3</sup> See CBOE Rule 24.1(h) (defining Reporting Authority).

<sup>4</sup> 15 U.S.C. 78s(f)(b).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

<sup>7</sup> 17 CFR 200.30-3(a)(12).