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) of the Act[9] that the rules of an exchange 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. CBOE believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest because the RAES eligibility rules would be applied consistently for similar products involving broad-based indexes and options on ETFs on broad-based indexes. In addition, CBOE believes the amended CBOE Rule 24.17 would facilitate greater enforcement of market-maker obligations to improve, update, and honor competitive markets in index-related option classes.

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

CBOE does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor received.

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 CBOE consents, the Commission will:

(A) By order approve such 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 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 filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–49 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–32737 Filed 12–26–02; 8:45 am]

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[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47034; File No. SR–CBOE–2002–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Day Trading Margin Requirements

December 19, 2002.

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 December 9, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 Exchange. The Exchange submitted the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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 Exchange proposes to amend Chapter 12 of its rules ("Margins") to implement specific requirements for day trading in customer accounts of member organizations. The text of the proposed rule change follows. New rule language is italicized.

CHAPTER 12: Margins

Rules 12.1 and 12.2: No change.

Rule 12.3

(a) through (i)(3): No change.

(i)(4) equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). *The minimum equity requirement for a "pattern day trader" is $25,000 pursuant to Rule 12.3(j)(4).*

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided the account is in compliance with Regulation T of the Board of Governors of the Federal Reserve System and after such withdrawal the equity in the account is at least the greater of $2,000 (*$25,000 in the case of "pattern day traders*") or an amount sufficient to meet the maintenance margin requirements of this Rule.

Day Trading

(j)(1) The term "day trading" means the purchasing and selling, or the selling and purchasing, of the same security on the same day in a margin account except for:

(A) a long security position held overnight and sold the next day prior to any new purchases of the same security, or

(B) a short security position held overnight and purchased the next day prior to any new sales of the same security.

(2) The term "pattern day trader" means any customer who executes four (4) or more day trades within five (5) business days. However, if the number of day trades is 6% or less of total trades for the five (5) business day period, the customer will no longer be considered a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

pattern day trader and the special requirements under paragraph 12.3(j)(4) of this Rule will not apply.

(3) The term "day trading buying power" means the equity in a customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in paragraph (b) of this Rule, multiplied by four (4), for equity securities.

Whenever day trading occurs in a customer's margin account, the special maintenance margin required for the day trades in equity securities shall be 25% of the cost of all the day trades made during the day. For non-equity securities, the special maintenance margin shall be as required pursuant to the other provisions of this Rule. Alternatively, when two or more day trades occur on the same day in the same customer's account, the margin required may be computed utilizing the highest (dollar amount) open position during that day. To utilize the highest open position computation method, a record showing the "time and tick" of each trade must be maintained to document the sequence in which each day trade was completed.

(4) Special Requirements for Pattern Day Traders.

(A) Minimum Equity Requirement for Pattern Day Traders. The minimum equity required for the accounts of customers deemed to be pattern day traders shall be $25,000. This minimum equity must be maintained in the customer's account at all times (see Interpretations and Policies .16 and .17 of this Rule).

(B) Pattern day traders cannot trade in excess of their day trading buying power as defined in paragraph (j)(3) above. In the event a pattern day trader exceeds its day trading buying power, which creates a special maintenance margin deficiency, the following actions will be taken by the member organization:

(1) The account will be margined based on the cost of all the day trades made during the day, and

(2) The customer's day trading buying power will be limited to the equity in the customer's account at the close of business of the previous day, less the maintenance margin required in paragraph (b) of this Rule, multiplied by two, for equity securities.

(C) Pattern day traders who fail to meet their special maintenance margin calls as required within five (5) business days from the date the margin deficiency occurs will be permitted to execute transactions only on a cash available basis for 90 days or until the special maintenance margin call is met.

(D) Pattern day traders are restricted from utilizing the guaranteed account provision under Rule 12.8 for meeting the requirements of this Rule 12.3(j).

(E) Funds, deposited into a pattern day trader's account to meet the minimum equity or maintenance margin requirements of this Rule 12.3(j), cannot be withdrawn for a minimum of two (2) business days following the close of business on the day of deposit.

(5) When the equity in a customer's account, after giving consideration to the other provisions of this Rule, is not sufficient to meet the requirements of Rule 12.3(j), additional cash or securities must be received into the account to meet any deficiency within five (5) business days of the trade date.

In addition, on the sixth business day only, member organizations are required to deduct from net capital the amount of unmet maintenance margin calls pursuant to SEC Rule 15c3–1.

Interpretations and Policies:

.16 In the event that the member organization at which a customer seeks to open an account, or resume day trading in an existing account, knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required under Rule 12.3(j)(4)(A) must be deposited in the account prior to commencement of day trading.

.17 When a customer engages in pattern day trading, the minimum equity required under Rule 12.3(j)(4)(A) must be deposited in the account before such customer may continue day trading.

.18 For purposes of Rule 12.3(j)(3), "time and tick" (i.e., calculating margin utilizing each trade in the sequence that it is executed, using the highest open position during the day) may not be used for a pattern day trader who exceeds their day trading buying power.

.19 For purposes of Rules 12.3(j)(3) and 12.3(j)(4)(B)(2) above, the day trading buying power for non-equity securities shall, at a minimum, be computed using the applicable maintenance margin requirements pursuant to Rule 12.3.

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 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 CBOE proposes to implement specific margin requirements for day trading in Chapter 12 of its rules ("Margins"). These requirements would be incorporated into Rule 12.3 under new paragraph (j). The CBOE is essentially adopting the requirements contained in a New York Stock Exchange ("NYSE") rule filing approved by the Commission. The Commission simultaneously approved fundamentally comparable rules filed by the National Association of Securities Dealers.[5]

Day trading is the purchasing and selling (or the selling and purchasing) of the same security on the same day in a margin account. Day traders attempt to profit from intra-day price movements of securities. Excessive day trading can pose significant credit risk to a broker-dealer.

The day trading of securities by customers of broker-dealers has increased greatly in recent years. The rise in the popularity of day trading is due in large part to the proliferation of on-line trading and broker-dealers that specialize in providing instruction on, and accommodating, day trading. Day trading has also become a more attractive endeavor because of the ever increasing speed at which orders can be routed and executed. Given the general increase in day trade activity and the new day trading requirements of the NYSE and NASD, the CBOE believes it prudent to implement day trading requirements at this time.

When an investor purchases a security on margin, the investor pays for part of the purchase cost (*i.e.*, the margin requirement) and the broker-dealer loans the investor the amount needed to pay for the balance. The use of margin increases both the potential return and financial risk to the investor. This is because margin enables an investor to purchase more of the security with a given amount of funds than the investor could purchase on a strictly cash basis.

Pursuant to Section 7(a) of the Act,[6] the Board of Governors of the Federal

[5] *See* NYSE Rule 431 and NASD Rule 2520; Securities Exchange Act Release No. 34–44009 (February 27, 2001); 66 FR 13608 (March 6, 2001) (order approving File Nos. SR–NYSE–99–47 and SR–NASD–00–03).

[6] 15 U.S.C. 78g(a).

Reserve System (the ''Federal Reserve'') is vested with the authority to regulate the extension of credit by broker-dealers on customers' securities transactions. In order to prevent the excessive use of credit for the purchase or carrying of securities as intended by Section 7(a), the Federal Reserve instituted Regulation T.[7] Regulation T contains initial margin requirements only, and allows all trades executed during a day to be netted in order to determine if a margin deficiency exists at the end of the day. For a day trade, the margin currently required under Regulation T is any loss. Day traders, therefore, are not required under Regulation T to meet the initial margin requirement on a security position held for part of the day. However, the day trader, and the firm, has been exposed to intra-day risk. In actuality, day traders receive an extension of credit from their broker-dealers on an intra-day basis when they effect day trades, even though a day trade results in no open position at the end of the day.

The Exchange's current rules establish minimum levels of margin that must be maintained in customer accounts (*i.e.*, maintenance margin). These requirements only apply to the positions in an account at the end of the day and, like Regulation T, do not cover security positions held for only a fraction of a day. For options, the Exchange's margin rules also prescribe initial margin requirements as permitted by Regulation T, provided such rules have been approved by the Commission. Again, like Regulation T, these initial margin requirements do not cover positions that are opened and closed in an account before the end of the day.

The aim of this proposal is to deter excessive day trading by requiring day traders to deposit and maintain minimum levels of equity and margin to support their day trading activity. This is consistent with Regulation T in that Regulation T permits a registered securities exchange to impose additional requirements.[8] For uniformity, the Exchange is adopting essentially the same day trading requirements set forth in NYSE Rule 431 and NASD Rule 2520.

The elements of the day trading requirements proposed by the Exchange are summarized below.

Definitions

The proposed rule defines ''day trading'' as the purchasing and selling, or the selling and purchasing, of the same security on the same day in a margin account. An exception is provided for liquidations of positions held overnight that are followed by a transaction that restores the same position.

The designation ''pattern day trader'' refers to a customer that executes at least four (4) day trades within five (5) business days, provided the number of day trades represents more than 6% of total trades in the customer's account for the five day period. Thus, if the number of day trades is 6% or less of the total number of transactions, the customer need not be classified as a pattern day trader. The Exchange believes that this aspect of the proposal provides fairness because four day trades would be insignificant in proportion to a large number of transactions.

The term ''day trading buying power'' is established in order to allow day trading to be conducted up to a set maximum, beyond which a day trading margin call is incurred. It is defined as the equity in a customer's account at the close of business of the previous day less the total maintenance margin required multiplied by 4 for equity securities.

Requirement for Non-Pattern Day Traders

Customers will be required to have enough equity to meet the maintenance margin on all day trades. For equity securities, the maintenance margin would be 25% of the cost of all day trades. If the customer's account has insufficient equity to meet the maintenance margin, the customer will have five (5) business days to deposit the amount needed. If a deposit is not made, the member organization must take a one time capital charge on the sixth business day for any unmet deficiency.

Additional Requirements for Pattern Day Traders

A pattern day trader must have account equity of at least $25,000 at all times. If a member organization knows, or there is a reasonable basis for believing, that a new account will pattern day trade, or that an existing account will resume pattern day trading, the member organization must require that the $25,000 minimum equity be in the account prior to accepting any opening orders. A pattern day trader may not be allowed to continue day trading if account equity falls below $25,000. Additionally, a pattern day trader's account may not be guaranteed by another account for the day trading margin requirement. In prohibiting guarantees, each pattern day trader must demonstrate actual financial ability to engage in day trading, independently.

The day trading margin requirement for pattern day traders is the same as for non-pattern day traders (25% of the cost, or proceeds, for equity securities). Pattern day traders, however, incur a penalty if they exceed their day trading buying power. If they exceed their day trading buying power, two restrictions must be imposed until the deficiency is deposited or for five business days, whichever comes first. The restrictions are as follows:

1. All subsequent day trades must be margined based on the cost of all the day trades made during the day; and

2. The day trade margin requirement for equity securities must be increased from 25% to 50%. (For day trades involving purchases of options eligible for loan value, the day trade maintenance margin requirement must be increased from 75% to 100%.)

As with non-pattern day traders, pattern day traders must deposit any maintenance margin deficiency as a result of day trading within five (5) business days. However, in the event the deficiency is not met within the requisite five business days, a pattern day trader may not be permitted to execute new transactions unless the margin required is on deposit. This restriction must remain in effect for 90 days or until a deposit sufficient to cover the deficiency is received. Again, as with non-pattern day traders, the member organization must take a one time capital charge on the sixth business day for any unmet deficiency.

When a pattern day trader deposits funds to meet a day trade equity or maintenance margin requirement, those funds may not be withdrawn for a minimum of two (2) business days following the close of business on the day of deposit. This requirement is intended to curtail day trading that is not supported by the day trader's own funds. Day traders are able in many instances to borrow on an overnight basis from various sources in order to meet a day trading requirement. By disallowing next-day withdrawals of funds deposited to meet a day trading requirement, it is expected that lenders will be less inclined to loan funds to a day trader if the funds can't be repaid the following day.

When two or more day trades occur on the same day, the margin required may be computed utilizing the highest individual open position in dollar terms on that day, provided a record of the ''time and tick'' of each transaction is maintained showing the sequence in which each day trade was completed. This provision is applicable to both

[7] 12 CFR 220 *et seq.*

[8] *See* 12 CFR 220.1(b)(2).

non-pattern and pattern day traders. As noted above for pattern day traders, this privilege must be withdrawn if the day trading buying power is exceeded.

2. Statutory Basis

The proposed day trading rules are intended to control the amount of day trading customers can undertake and thereby prevent excessive use of credit on an intra-day basis. As such, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest. Furthermore, the proposed day trading rules are consistent with Section 7(a) of Act [10] and the rules and regulations of the Board of Governors of the Federal Reserve System, in that control of excessive credit for purchasing or carrying securities is the fundamental purpose.

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 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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b-4(f)(6) [12] thereunder because the 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 the proposed rule change was filed, or such shorter time as the Commission may designate. 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, 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 4 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 File No. SR–CBOE–2002–70 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–32798 Filed 12–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47035; File No. SR–ISE–2002–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC to Increase the Number of Authorized Shares of Class B Common Stock, Series B–2 From 100 to 130

December 19, 2002.

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 November 21, 2002, the International Securities Exchange, Inc. (''ISE'' 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 Exchange. 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 ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B–2 from 100 to 130. This increase would result in the creation of 30 additional Competitive Market Maker (''CMM'') Memberships. The text of the proposed rule change is available at the ISE 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 ISE 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 ISE 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 increase the number of authorized shares of Class B Common Stock, Series B–2 from 100 to 130. This increase would result in the creation of 30 additional CMM Memberships.[3] CMMs are market makers that compete with a Primary Market Maker (''PMM'') and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or ''Bins,'' and currently assigns one PMM and 10 CMMs to each Bin. Under this proposal, the Exchange would add three additional CMMs to each Bin.

The Board of Directors (the ''Board'') has established an Ad Hoc Committee on the Sale of CMM Trading Rights (the ''Committee'') to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-

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[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78g(a).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE Rule 100(19) defines ''Membership'' as the ''trading privileges associated with a share of Class B Common Stock.''