

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44964; File No. SR-CBOE-2001-29]

### Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Exchange's Delisting Criteria

October 19, 2001.

#### I. Introduction

On May 29, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "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<sup>2</sup> thereunder, a proposed rule change amending the Exchange's delisting criteria. On August 3, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 21, 2001.<sup>4</sup> The Commission received no comments on the proposal. On October 5, 2001, the CBOE submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended. In addition, the Commission solicits comments on Amendment No. 2 from interested persons.

#### II. Description of the Proposal

The proposed rule change, as amended, would modify Interpretation .01 to CBOE Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, by reducing from \$5 to \$3 the guideline price used to determine whether an underlying security previously approved for Exchange

options transactions continues to meet the exchange's listing requirements.<sup>6</sup> The proposed rule change would also amend Interpretation .02 to CBOE Rule 5.4 to reduce from \$5 to \$3 the price above which an underlying security must be traded before the Exchange may add additional series of options intra-day.<sup>7</sup> In addition, the proposed rule change would modify Interpretation .01 and Interpretation .02 to CBOE Rule 5.4, by reducing from six calendar months to one day, the amount of time the CBOE would be required to look back at the closing market price of the underlying security when determining if an underlying security previously approved for options transactions no longer meets the requirements for the continuance of such approval. Lastly, the proposed rule change would eliminate Interpretation .04 to CBOE Rule 5.4, which will no longer be needed in light of the above mentioned changes the instant proposed rule change would implement.

#### 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>8</sup> and, in particular, the requirements of section 6 of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission believes that by limiting the determination of the closing price to trades occurring on the primary market and requiring that the stock price meet the minimum price on the primary market both at the close the

day before and at the time the Exchange determines to add an intra-day series, the delisting criteria should continue to ensure that options traded on the CBOE are based on securities of companies that are financially sound and are still subject to adequate minimum standards. Therefore, the Commission believes that the CBOE's proposed rule change, as amended, should serve to protect investors and the public interest.

The Commission notes that the proposal and Amendment No. 1 were noticed for the full 21-day comment period and the Commission received no comments regarding the proposal, as amended. The Commission further notes that Amendment No. 2 made technical changes to the proposed rule change; accordingly, the Commission finds good cause pursuant to section 19(b)(2) of the Act<sup>11</sup> to accelerate approval of Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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, as amended, 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 the CBOE. All submissions should refer to File No. SR-CBOE-2001-29 and should be submitted by November 19, 2001.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

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

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

<sup>3</sup> See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2001 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 44693 (August 13, 2001), 66 FR 43937.

<sup>5</sup> See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 4, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE clarified in Interpretation .01 and Interpretation .02 to CBOE Rule 5.4 that it will look to the primary market in which the underlying security trades in determining whether the underlying security satisfies the price requirements for adding additional series of option contracts.

<sup>6</sup> The Exchange will use the closing price per share in the primary market in which the underlying security trades for purposes of determining the guideline price. See Amendment No. 2, *supra* note 5.

<sup>7</sup> The Exchange will use the closing price per share in the primary market in which the underlying security trades and the price per share of the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to add the series intra-day. *Id.*

<sup>8</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as amended, (File No. SR-CBOE-2001-29), is approved.

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. 34-44967; File No. SR-CHX-2001-02]

### Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Processing of Depository Eligible Transactions by Clearing Agencies Exempt From Registration and by Qualified Vendors

October 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 18, 2001, the Chicago Stock Exchange ("CHX") filed with the Securities and Exchange Commission ("Commission") and on August 31, October 10, and October 18, 2001, amended a proposed rule change as described in Items I and II below, which items have been prepared primarily by the CHX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The CHX is amending its rules governing the entities qualified to process electronic confirmations and affirmations of depository eligible transactions. Specifically, the CHX proposes to amend portions of Article XV, Rule 5 and related published interpretations and policies to provide that no members shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless the facilities of a registered clearing agency, a clearing agency that is exempt from registration, or a qualified vendor shall

be utilized for the electronic confirmation and affirmation of all depository eligible transactions.

#### 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 CHX 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 CHX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CHX is amending portions of Article XV, Rule 5 and related published interpretations and policies pertaining to the types of entities that may process confirmations and affirmations of depository eligible transactions. Under current CHX rules, CHX members may only accept an order from a customer pursuant to an agreement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer if that customer or its agent utilizes the facilities of a "securities depository" for comparison, acknowledgement, and book entry settlement of depository eligible transactions.<sup>3</sup> CHX rules define a "securities depository" as a clearing agency registered with the Commission pursuant to section 17A(b)(2) of the Act.

The Depository Trust Company ("DTC") is a clearing agency registered with the Commission. DTC has combined its TradeSuite family of institutional trade processing services with the institutional trade processing services offered by Thomson Financial ESG<sup>4</sup> in a proposed joint venture, Omgeo, between The Depository Trust & Clearing Corporation ("DTCC"),<sup>5</sup> Thomson Financial Inc.,<sup>6</sup> and Interavia,

A.G. ("Interavia").<sup>7</sup> Omgeo provides through its wholly owned subsidiary, Global Joint Venture Matching Services-US, LLC ("GJVMS"), post-trade, presettlement related services, including execution notification, allocation, confirmation, central matching service, operational and standing databases (*i.e.*, trade enrichment), and communication facilities among trading parties and their settlement agents.

GJVMS has been granted an exemption from registration as a clearing agency under section 17A of the Exchange Act and thus would not constitute a "securities depository" under current CHX rules.<sup>8</sup> Currently, GJVMS is the only U.S. provider of confirmation and affirmation services.

In order to permit CHX members and order sending firms to utilize the services of GJVMS, other exempt clearing agencies, or qualified vendors, several CHX rules must be amended.<sup>9</sup> The CHX believes that use of an exempt entity or qualified vendor would not pose any threat to the integrity of processing depository eligible transactions given the significant technological and other requirements that such an exempt clearing agency or qualified vendor would need to satisfy under the proposed rule.

The CHX believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) in that it is designed to promote just and equitable principles of trade, 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.

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

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>7</sup> Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

<sup>8</sup> Securities Exchange Act Release Nos. 44188 (April 17, 2001) [File No. 600-32] (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600-32] (notice of filing of application for exemption from clearing agency registration).

<sup>9</sup> "Qualified vendor" is defined by Art. XV, Rule 5 to mean a vendor of electronic confirmation and affirmation services that meets a series of specific requirements set forth in the rule.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the CHX.

<sup>3</sup> CHX Rules, Article XV, Rule 5.

<sup>4</sup> Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary.

<sup>5</sup> DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation ("NSCC").

<sup>6</sup> Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company.