

adequately disclosed certain licensing transactions.

The Division has requested that the Commission reverse the law judge's findings of fact and conclusions of law and his dismissal of all charges, and issue cease-and-desist orders against the Respondents.

Among the issues likely to be argued are:

- a. Whether Spectrum's accounting treatment was consistent with GAAP;
- b. Whether the Respondents acted negligently;
- c. Whether the Respondents were "a cause" of Spectrum's violations of the reporting provisions within the meaning of Exchange Act section 21C; and
- d. Whether issuance of cease-and-desist orders against the Respondents is in the public interest.

For further information, please contact the Office of the Secretary at (202) 942-7070.

The subject matter for the Closed Meeting scheduled for Wednesday, September 10, 2003 will be: Post argument discussion.

The subject matter for the Open Meeting scheduled for Thursday, September 11, 2003, will be:

1. The Commission will consider whether to adopt amendments to rule 206(4)-2, the custody rule under the Investment Advisers Act of 1940, to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody of client assets.

For further information, please contact Vivien Liu at (202) 942-0664.

2. The Commission will consider whether to propose a rule to exempt qualified foreign banks from the insider lending prohibition of the Securities Exchange Act of 1934 section 13(k), as added by section 402 of the Sarbanes-Oxley Act. The proposed rule would exempt foreign banks that meet specified criteria similar to those that qualify domestic banks for the exemption under section 13(k). The Commission will also consider whether to propose an amendment to Form 20-F that would require a foreign bank issuer to provide the same disclosure regarding problematic loans to insiders as that required for domestic banks under Regulation S-K.

For further information contact Elliot Staffin at (202) 942-2990.

3. The Commission will also consider whether to propose an amendment to For F-6 that would add an eligibility requirement making the form unavailable to register under the Securities Act of 1933 depository shares

evidenced by American depository receipts if the foreign issuer has separately listed the deposited securities on a registered national securities exchange or automated inter-dealer quotation system of a national securities association.

For further information please contact Michael Coco at (202) 942-2990.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942-7070.

Dated: September 3, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03-22771 Filed 9-3-03; 12:52 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48416; File No. SR-CBOE-2003-14]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Options on a Reduced Value NYSE Composite Index

August 27, 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 March 25, 2003, 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, II, and III below, the Exchange has prepared. On August 6, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE is proposing to trade options on the reduced-value, revised NYSE Composite Index ("Reduced Value NYSE Composite Index" or

"Reduced Value Index") based on levels imposed by the New York Stock Exchange ("NYSE") itself. Options traded on the "old" NYSE Composite Index will no longer trade on the CBOE. The text of the proposed rule change is available at the Office of the Secretary, the 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 CBOE 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 CBOE 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

###### Index Design

Currently, the CBOE lists and trades European-style, cash-settled options on the NYSE Composite Index. The NYSE Composite Index, prior to January 9, 2003, was a full-market capitalization-weighted index comprised of all of the securities that are listed on the NYSE.<sup>4</sup> Recently, the NYSE announced that, as of January 9, 2003, it would replace the NYSE Composite Index ("Old Index") with a new version that features a revised methodology and composition. The revised index contains 700 fewer components and will carry a new value around 5,000, as opposed to the year-end closing level of around 500, as of December 31, 2002.

The revised index will continue to measure the performance of all NYSE-listed common stock, American Depositary Receipts ("ADR"), tracking stocks, and real estate investment trusts ("REIT"), but will exclude closed-end investment companies, exchange traded funds ("ETF"), and derivatives. Additionally, the revised NYSE Composite Index ("Revised Index") will use a float-adjusted market capitalization weighting method instead of the previous full-market capitalization weighting.<sup>5</sup> Float-adjusted

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

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

<sup>3</sup> See letter from Jim Flynn, Attorney II, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated August 5, 2003 ("Amendment No. 1").

<sup>4</sup> Excluding preferred stock issues.

<sup>5</sup> CBOE has indicated that according to the NYSE, these revisions will create an index that is more representative of the investable equity securities and those securities that are better suited to track future changes in the U.S. stock market.

market capitalization, as opposed to full market capitalization, is used to reflect only the number of shares that are actually available to investors.

In calculating the market capitalization of each underlying issuer, the Float-adjusted market capitalization methodology reduces each underlying issuer's market share by the market capitalization value represented by

those shares held through block ownership. The following are considered block ownership for the purposes of float-adjusted market capitalization: (1) Cross ownership—shares that are owned by other companies; (2) government ownership—shares that are owned by governments or their agencies; (3) private ownership—shares that closely held by

individuals, families or charitable trusts and foundations; and, (4) restricted shares—shares that are not allowed to be traded during a certain period of time.

The following chart illustrates the pertinent differences between the old index methodology and the Revised Index methodology.

Security class eligible for inclusion	Old methodology	New methodology
Common Stocks .....	Yes .....	Yes.
ADRs .....	Yes .....	Yes.
Tracking Stocks .....	Yes .....	Yes.
REITs .....	Yes .....	Yes.
Closed-end funds .....	Yes .....	No.
ETFs .....	Yes .....	No.
Preferred stocks .....	No .....	No.
Derivatives .....	Yes .....	No.
Shares of beneficial interest .....	Yes .....	No.
Trust units .....	Yes .....	No.
Limited partnerships .....	Yes .....	No.
Weighting .....	Full market capitalization .....	Float-adjusted market cap.
Base Date .....	December 31, 1965 .....	December 31, 2002.
Base Value .....	50 .....	5,000.
Maintained/Calculated by .....	Securities Industry Automation Corp. (SIAC) .....	Dow Jones Indexes.
Reconstitution/Rebalancing .....	Ongoing .....	Ongoing.
Share Updates (<10%) .....	Daily .....	Quarterly.
Available Indexes .....	Price return index .....	Price and total return indexes.

### Index Calculation

The NYSE has calculated the Revised Index to a base value of 5,000 as of December 31, 2002. Due to the extremely large contract size (\$500,000) that would result from pairing the standard contract multiplier (\$100) with such a high underlying index level, the CBOE proposes to list and trade options based on one-tenth (1/10th) of the value of the Revised Index. Options on the Reduced Value NYSE Composite will provide investors with product offerings consistent with those available for the Old Index.

All option series on the old NYSE Composite Index have expired and no new series in old NYSE Composite Index options have been added or will be added. Options on the Reduced Value Index will trade under a new root ticker symbol.

In order to avoid confusion, the CBOE will notify market participants of both the Revised Index and the details of the new options series that the CBOE will list on the Reduced-Value Index. In its notification, the CBOE will include a discussion of the float adjusted market capitalization method. The Reduced-Value Index levels will be disseminated throughout the trading day at 15-second intervals through OPRA.

### Index Option Trading

The Exchange believes that listing options on the Reduced Value Index will attract a greater source of customer business than if options were based on the full value of the Revised Index. The Exchange also believes that options on the Reduced Value Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising this broad-based Index. Further, by reducing the value of the Revised Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The CBOE believes that this should attract additional investors, and, in turn, create a more active and liquid trading environment.

In addition to regular index options, the Exchange has the authority to list long-term index option series ("LEAPS®"), as well as reduced-value LEAPS,<sup>6</sup> in accordance with CBOE Rule 24.9(b)(1). The CBOE's rules specifically permitted the listing of reduced-value LEAPS on the "old" NYSE Composite Index.<sup>7</sup> The Exchange similarly intends

<sup>6</sup> CBOE Rule 24.1(g) provides that the current index value for a reduced-value LEAP is one-tenth (1/10th) of the current index value of the related index option. The "closing index value" shall be the last index value reported on a business day.

<sup>7</sup> See CBOE Rule 24.9(b)(2) (Reduced-Value LEAPS).

to allow for the listing of LEAPS or reduced-value LEAPS on the Reduced Value Index in order to provide investors with product offerings consistent with those that were available for the "old" NYSE Composite index. The Exchange will make a timely determination, based on contemporaneous market factors, as to when and if either LEAPS or reduced-value LEAPS shall be listed. In deciding whether to list LEAPS or reduced-value LEAPS, the Exchange will consider which type of series provides the most appropriate vehicle for customers to use as a long-term hedge.

The option settlement value on the Reduced Value Index will be based on the opening prices of the component securities as reported by the NYSE. For options on the Reduced Value Index, strike prices will be set to bracket the Reduced Value Index in 2.5-point increments for strikes below \$200 and 5-point increments above \$200, as will be reflected in CBOE Rule 24.9. The trading hours for options on the Reduced Value Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.

Options shall be European-style exercise and A.M.-settled, as currently reflected in CBOE Rule 24.9(a)(3), and position limits will remain the same for options traded on the Reduced Value Index as those established on the old Index; 45,000 contracts on either side of

the market. This is consistent with CBOE Rule 24.4.

For purposes of calculating customer margin requirements, the Revised Index, just like the Old Index, is considered a broad-based index for purposes of calculating customer margin requirements.

#### *Surveillance*

The Exchange represents that its surveillance procedures are adequate to monitor the trading in options and LEAPS on the Reduced Value Index. The CBOE does not believe that there are any material differences in the manner in which options on the Reduced Value Index will trade. The Exchange also believes that reducing the value of the Revised Index, as well as the other changes to the index's design and calculation, does not raise any new concerns about manipulation or adverse market impact. As a result, the Exchange believes that the existing surveillance procedures as they applied to the Old Index options should be adequate to detect or deter manipulation.<sup>8</sup> The CBOE also shall provide to members a formal notice which will describe the Revised Index, the Reduced Value Index, the new options root ticker symbol, and the options series to be listed on the Reduced Value Index.

#### 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>9</sup> in that it is designed to perfect the mechanisms 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 CBOE does not believe that the proposed rule change will impose any 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. 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 Exchange 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, 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 Exchange. All submissions should refer to file number SR-CBOE-2003-14 and should be submitted by September 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-22599 Filed 9-4-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48242; File No. SR-NASD-2003-92]

#### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval To a Proposed Rule Change To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers**

August 29, 2003.

#### **I. Introduction**

On June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 to adopt NASD Rule 2370 which would prohibit registered persons from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the rule, the loan falls within one of five prescribed permissible types of lending arrangements, and the member pre-approves the loan in writing. The proposed rule change was published for comment in the **Federal Register** on July 2, 2003.<sup>3</sup> The Commission received two comment letters on the proposal.<sup>4</sup> In addition, NASD submitted a response to comments.<sup>5</sup> This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

Under the proposal, registered persons would be prohibited from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the proposal, the loan falls within one of five permissible types of lending arrangements, and the member pre-

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

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

<sup>3</sup> See Securities Exchange Act Release No. 48093 (June 26, 2003), 68 FR 39608.

<sup>4</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Christine A. Bruenn, President, Maine Securities Administrator, North American Securities Administrators Association, Inc. ("NASAA"), dated July 23, 2003, ("NASAA Letter"); and Michael C. Herndon, Director, Public and Governmental Affairs, Certified Financial Planner Board of Standards, Inc. ("CFP"), dated July 23, 2003 ("CFP Letter").

<sup>5</sup> See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Shirley H. Weiss, Associate General Counsel, NASD, dated July 29, 2003 ("NASD Letter").

<sup>8</sup> Telephone conversation between Jim Flynn, Attorney II, CBOE, and Ian K. Patel, Attorney, Division of Market Regulation, Commission on August 26, 2003.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).