

Interpretation and Policy .01(a) and (b) to have been satisfied.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the current proposal will allow it to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, 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 unnecessary or inappropriate burdens 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.

<sup>4</sup> The Exchange represents that existing Interpretation and Policy .03 to CBOE Rule 5.4 would continue to apply when the Exchange considers whether any of the events specified in Interpretation and Policy .01 have occurred with respect to an underlying security. Specifically, Interpretation and Policy .03 to CBOE Rule 5.4 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded. Telephone conversation between Patrick Sexton, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

## 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-CBOE-2003-03 and should be submitted by March 25, 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47393; File No. SR-CBOE-2002-40]

### **Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Asian 25 Index and Options on the CBOE Euro 25 Index**

February 24, 2003.

## I. Introduction

On July 22, 2003, 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

thereunder,<sup>2</sup> a proposed rule change to provide for the listing and trading of options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. On January 13, 2003, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, as amended, appeared in the **Federal Register** on February 5, 2003.<sup>4</sup> The Commission received no comments on the proposed rule change. On February 19, 2003, CBOE filed Amendment No. 2 to the proposed rule change and requested accelerated effectiveness of the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended, on an accelerated basis.

## II. Description of the Proposed Rule Change

CBOE proposes to list and trade cash-settled, European-style stock index options on the CBOE Euro 25 Index and the CBOE Asian 25 Index, both broad-based indexes. The CBOE Euro 25 Index and the CBOE Asian 25 Index are capitalization-weighted indexes of twenty-five (25) American Depositary Receipts ("ADR"), New York Registered Shares ("NYS"), or NYSE Global Shares<sup>®</sup> ("NGS"), which are traded on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("AMEX"), or the NASDAQ.

### *A. Index Design*

The CBOE Euro 25 Index and the CBOE Asian 25 Index have each been designed to measure the performance of large market capitalization companies in their respective regions.<sup>6</sup> Options on

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

<sup>3</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 10, 2003 ("Amendment No. 1") (replacing the original filing in its entirety). Amendment No. 1, among other things: (1) Clarified the initial and maintenance criteria for the underlying component securities of the indices, including further detail on the component securities that are ADRs and not subject to comprehensive surveillance agreements; (2) clarified that options on both indices will be A.M. settled; (3) provided more recent market capitalization and weighting figures; and (4) specified that CBOE's surveillance procedures are adequate to monitor the trading of these products.

<sup>4</sup> See Securities Exchange Act Release No. 47287 (January 30, 2003), 68 FR 5942.

<sup>5</sup> See letter from James Flynn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 18, 2003 ("Amendment No. 2"). In Amendment No. 2, CBOE requests accelerated effectiveness of the proposed rule change to begin listing and trading options on the CBOE Euro 25 and CBOE Asian 25 Indexes.

<sup>6</sup> The Exchange will make an updated list of the components underlying each index available to the public on the internet by accessing the following

Continued

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

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

both indexes shall be A.M. settled. The component securities included in each index must have a minimum market capitalization of \$250 million and a trading volume of at least 500,000 shares on the NYSE, NASDAQ, or AMEX in each of the previous six months to be included in the index.<sup>7</sup>

Unless otherwise specified herein, both indexes shall satisfy the following general initial and maintenance criteria.

(1) At least 75% of the index, in terms of market capitalization weighting, must meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. (2) Any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance agreement shall not in the aggregate represent more than 20% weight of the index's aggregate market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to Rule 5.3, as further discussed below. (3) No single component security will represent more than 30% of the weight of the index. (4) Finally, the five highest weighted component security, in the aggregate, shall not account for more than 60% of the total weight of the index.

CBOE represents that it will review each index quarterly following the expiration of the respective index option contract to ensure that the above criteria are satisfied, and to make quarterly share changes as appropriate. CBOE believes that the CBOE Euro 25 Index satisfies the index criteria provided above.<sup>8</sup> In addition, CBOE believes that the CBOE Asian 25 Index satisfies the index criteria noted above.<sup>9</sup>

URL: <http://www.cboe.com/optprod/index/indexoptions.asp>.

<sup>7</sup> In the case of depository receipts, the market capitalization is determined based on the shares outstanding in the "home" market and the price in U.S. Dollars of the ADRs, NYSs, and NGSSs.

<sup>8</sup> Specifically, CBOE has represented the following as of December 20, 2002: (1) 23 of the 25 securities in the CBOE Euro 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 92.59% of the index by market capitalization weight and 92% by number. (2) 23 of the 24 ADR or NYS components that underlie the index are subject to comprehensive surveillance agreements. (3) No single component represents greater than 30% of the aggregate weight of the CBOE Euro 25 Index. (4) Finally, the five highest weighted component securities in the aggregate do not account for more than 60% of the weight of the Index.

<sup>9</sup> Specifically, CBOE has represented the following as of December 20, 2002: (1) 18 of the 25 components in the CBOE Asia 25 Index meet CBOE's listing criteria for equity options as set forth in CBOE Rule 5.3. This represents 77.73% of the index by market capitalization weight and 72% by number. (2) 13 of the 25 components, representing 68.71% of the index by market capitalization weight, in the CBOE Asian 25 Index are either subject to comprehensive surveillance agreements or are common stocks that are not required to have

## B. Calculation

According to CBOE, the methodology used to calculate the value of the indices is similar to the methodology used to calculate the value of other well-known broad-based indices.<sup>10</sup> The daily calculation of each index is computed by dividing the total market value of the companies in the respective Index by the index divisor. The divisor is adjusted periodically to maintain consistent measurement of the index. The values of each Index will be calculated by CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority.

## C. Index Option Trading

In addition to regular Index options, CBOE proposes to provide for the listing of long-term index option series ("LEAPS"®) in accordance with CBOE Rule 24.9.

For options on each index, strike prices will be set to bracket the respective index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below \$3 will be 0.05 and for series trading above \$3 the minimum tick will be 0.10. The trading hours for options on both indexes will be from 8:30 a.m. to 3:02 p.m. Chicago time.<sup>11</sup>

## D. Maintenance

Both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be monitored and maintained by CBOE. The CBOE will make all necessary adjustments to the indexes to reflect component additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to restructuring,

comprehensive surveillance agreements. CBOE also notes that the Commission has specified in the past that a non-U.S. security need not be considered in calculating the 20% threshold if at least 50% of the worldwide trading volume in that particular security occurs within the U.S. market. See CBOE Mexico Index filing, Securities Exchange Act Release No. 34241 (June 22, 1994), 59 FR 33557 (June 29, 1994) (SR-CBOE-94-18). CBOE notes that this is consistent with Interpretation and Policy .03(ii) to CBOE Rule 5.3. Thus, CBOE plans to apply Interpretation and Policy .03 to CBOE Rule 5.3 to any non-U.S. component that exceeds the 20% threshold for non-U.S. components that are not subject to comprehensive surveillance sharing agreements.

<sup>10</sup> CBOE noted that the indices base date is January 2, 2002, when the respective index values were set to 100. On April 16, 2002, the CBOE Euro 25 Index had a closing value of 95.99 and the CBOE Asian 25 Index had a closing value of 95.64.

<sup>11</sup> Exhibits F and G to proposed rule change present proposed contract specifications for CBOE Euro 25 Index options and CBOE Asian 25 Index options.

mergers, or spin-offs involving the underlying components. CBOE represented that over time the number of component securities in the Index may change, but at no time will the number of underlying components drop to less than twenty. In the event of a component replacement, the divisor will be adjusted accordingly to provide continuity in index values.

Absent prior Commission approval, the component securities in either index will not exceed 40 nor be lower than 20 and shall satisfy the criteria as provided above. If the Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

## E. Surveillance

CBOE will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS. For surveillance purposes, CBOE will make all reasonable efforts to monitor the trading activity and other pertinent information relating to the underlying components. CBOE represents that its surveillance procedures are adequate to monitor trading of these products.

## F. Exercise and Settlement

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. The exercise settlement value of the Index at option expiration will be calculated by CBOE based on the opening prices of the component securities on the business day prior to expiration. If a component security fails to open for trading, the last available price on the security will be used in the calculation of the index, as is done for currently listed indices.

## G. Position Limits

CBOE proposes to establish position limits for options on the CBOE Euro 25 Index and the CBOE Asian 25 Index at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent to the limits applicable to options on other

broad-based indices under CBOE Rule 24.4(a).<sup>12</sup>

#### *H. Exchange Rules Applicable*

Except as modified herein, the Rules in Chapter XXIV will be applicable to both CBOE Euro 25 Index options and CBOE Asian 25 Index options. Index option contracts based on both the CBOE Euro 25 Index and the CBOE Asian 25 Index will be subject to the position limit requirements of CBOE Rule 24.4(a). Additionally, CBOE affirms that it possesses the necessary systems capacity to support a new series that would result from the introduction of both CBOE Euro 25 Index options and CBOE Asian 25 Index options. CBOE has also been informed that OPRA has the capacity to support such new series.

### **III. Discussion**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,<sup>13</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> Specifically, the Commission finds that the listing and trading of options on the Euro 25 Index and Asian 25 Index will permit investors to participate in the price movements of large market capitalization companies in their respective regions on which the indices are based. The Commission also believes that the listing and trading of options on the Euro 25 Index and Asian 25 Index will allow investors holding positions in some or all of the securities underlying the Indexes to hedge the risks associated with their portfolios. Accordingly, the Commission believes that the Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of highly market capitalized European Union and Asian equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of these index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.<sup>15</sup> Nevertheless,

the trading of options on the Euro 25 Index and Asian 25 Index raises several issues related to the design and structure of the Indexes, customer protection, surveillance, and market impact. The Commission believes, however, that the CBOE has adequately addressed these issues for the reasons discussed below.

#### *A. Index Design and Structure*

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit CBOE's rules applicable to the trading of broad-based index options to apply to these Index options. First, both the Euro 25 Index and Asian 25 Index consists of 25 actively traded equity securities. Second, the Euro 25 Index and Asian 25 Index each consist of 25 of the most highly capitalized securities and ADRs in their respective regions. For example, CBOE represented in the proposing release that on December 20, 2002, the market capitalization of the individual securities in the Euro 25 Index ranged from a high of \$97.208 billion to a low of \$5.37 billion, with a mean value of \$30.326 billion. The market capitalization of the individual securities in the Asian 25 Index ranged from a high of \$49.140 billion to a low of \$382.722 million, with a mean value of \$10.696 billion. Third, CBOE's maintenance criteria require that at least 75% of each Index, in terms of market capitalization, must meet the listing criteria for equity options set forth in CBOE Rule 5.3, the minimum market capitalization of component securities is \$250 million, and component securities must have a trading volume of 500,000 shares in each of the previous six months. The Commission believes that CBOE's maintenance criteria will help ensure that the Indexes continue to be comprised of component securities that are highly capitalized and actively traded. Fourth, CBOE's maintenance criteria require that no single component security will represent more than 30% of the weight of the index. The Commission believes that this will help to ensure that the index maintains its broad representative sample of securities in the Euro 25 Index and

Asian 25 Index and that no single or small group of securities dominate the Indexes.

The Commission also believes that the general broad diversification of the Indexes' component securities, as well as their high capitalization and trading activity, minimize the potential for manipulation of the Indexes. First, as discussed above, the Euro 25 Index and Asian 25 Index represent a broad cross-section of highly-capitalized securities, with no single industry group or component security dominating each Index. Second, the securities underlying each Index are relatively actively traded. Third, the Commission believes that the Index continues to represent securities with the highest capitalization and trading volume. In addition, the CBOE has proposed position and exercise limits for the Indexes that are consistent with other broad-based index options.

#### *B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as the Euro 25 and Asian 25 Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the index options and index LEAPS will be subject to the same regulatory regime as the other standardized options traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Euro 25 and Asian 25 Index options and Index LEAPS.<sup>16</sup>

#### *C. Surveillance*

In evaluating derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and

<sup>12</sup> Specifically, CBOE Rule 24.4(a) imposes a standard position limit of 50,000 contracts on the same side of the market for CBOE's Mexico 30 Index and CBOE's Germany 25 Index.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public

interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed Index options will provide investors with a hedging vehicle that should reflect the overall market of securities representing a segment of the U.S. securities market.

<sup>16</sup> In addition, CBOE has represented that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support these new series of options that would result from the introduction of Index options and Index LEAPS. See letter from Joe Corrigan, Executive Director, OPRA, to John Hiatt, CBOE, dated July 11, 2002.

deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that it is important that the Commission determine that there is an adequate mechanism in place to provide for the exchange of information between the market trading the derivative product and the market on which the securities underlying the derivative product are traded. Such mechanisms enable officials to surveil trading in both the derivative product and the underlying securities. For foreign stocks index derivative products, such mechanisms are especially important for the relevant foreign and domestic exchanges to facilitate the collection of necessary regulatory, surveillance and other information.

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index derivative product comprised of foreign securities is to be traded in the United States.<sup>17</sup> In absence of comprehensive surveillance sharing agreements between the foreign and domestic exchanges, the Commission has relied in the past on surveillance sharing arrangements between the relevant regulators. In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by options on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place between the foreign and domestic exchanges will ensure the integrity of the market.

Under CBOE's current proposal, however, the Commission believes that it is appropriate to permit the listing and trading of options on an ADR without the existence of a comprehensive surveillance sharing agreement with the foreign market where the underlying security trades, as

long as the U.S. market for the underlying ADRs is at least as large as the market for the underlying foreign security. Specifically, the proposed listing standards require that any non-U.S. component security (common stock or ADR) that is not subject to a comprehensive surveillance sharing agreement shall not in the aggregate represent more than 20% of the weight of each Index's market capitalization, unless those non-U.S. components satisfy the alternative criteria under Interpretation and Policy .03 to CBOE Rule 5.3.<sup>18</sup>

According to the CBOE, 23 of the 24 ADR or NYS component securities of the Euro 25 Index are subject to comprehensive surveillance sharing agreements. Further, 13 of the 25 component securities of the Asian 25 Index are either subject to comprehensive surveillance sharing agreements, or are common stocks. The ADR components of the Asian 25 Index that are not subject to comprehensive surveillance agreements satisfy the alternative criteria in Interpretation and Policy .03 of CBOE Rule 5.3. In addition, 21 of the 25 component securities or approximately 89% of the aggregate index market capitalization of the Asian 25 Index do satisfy CBOE's acceptable listing standards. The Commission believes that CBOE's standards will ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades. In these cases, the Commission believes that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. The CBOE represented that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options and LEAPS, and that its surveillance procedures are

adequate to monitor the trading of these products.

#### *D. Market Impact*

The Commission believes that the listing and trading of Euro 25 and Asian 25 Index options on the CBOE will not adversely affect the underlying securities markets. First, as described above, both Indexes are broad-based and comprised of 25 securities with no one component or industry group dominating the Index. Second, as noted above, the component securities contained in the Indexes all have large market capitalizations and are actively traded. Third, existing CBOE index options rules and surveillance procedures will apply to Euro 25 and Asian 25 Index options. Fourth, the position limits of 50,000 contracts on either side of the market, with no more than 30,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Furthermore, the Commission notes that absent prior SEC approval, the component securities in either Index will not exceed 40 or be lower than 20 and shall satisfy CBOE's maintenance criteria. If an Index fails at any time to satisfy the maintenance criteria, CBOE will immediately notify the Commission of the fact and will not open for trading any additional series of options on the Index unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on each respective Index has been approved by the Commission under Section 19(b)(2) of the Exchange Act.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 thereto prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed rule change, as amended by Amendment No. 1, has been published for public comment in the **Federal Register** as of February 5, 2003. The Commission has not received any comments on the proposal. Further, the Commission notes that Amendment No. 2 does not change the proposed rule change; rather, CBOE requests that the Commission accelerate the effectiveness of the proposal so that the CBOE may begin the trading of the Euro 25 Index and

<sup>17</sup> The Commission believes that a comprehensive surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that such agreements require that the parties provide each other, upon request, information about market trading activity, clearing activity, and the identity of the purchasers and sellers of securities underlying the derivative product.

<sup>18</sup> Specifically, the Commission notes that: (1) As provided in Interpretation and Policy .03(ii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if over 50% of the combined worldwide trading volume in the ADR occurs in the U.S. ADR market for the previous three months from date of selection; or (2) as provided in Interpretation and Policy .03(iii) to CBOE Rule 5.3, an individual ADR without a comprehensive surveillance sharing agreement will satisfy CBOE's listing criteria if: (a) At least 20% of the worldwide trading volume in that foreign security occurs within the U.S. market and a market for which CBOE has a comprehensive surveillance agreement; (b) the average daily trading volume of the ADR over the past 3 months is 100,000 shares or more; and, (c) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of trading days during the past months.

Asian 25 Index immediately. The Commission is accelerating approval of the proposed rule change, as amended by Amendment No. 1, prior to the expiration of the comment period because these proposed Indexes are similar the other broad-based index options that CBOE currently trades, and CBOE has addressed the relevant regulatory issues, especially pertaining to comprehensive surveillance agreements. Because Amendment No. 2 does not change the proposed rule change but only request acceleration prior to the expiration of the comment period, the Commission is noticing and approving this amendment on an accelerated basis. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, and Amendment Nos. 1 and 2 thereto, on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 to 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, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-2002-40 and should be submitted by March 25, 2003.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-CBOE-2002-40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4953 Filed 3-3-03; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47402; File No. SR-OCC-2002-11]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Stock/Loan Hedge Program

February 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 21, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 16 and September 26, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would modify OCC's Stock/Loan Hedge Program ("Hedge Program") to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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 purpose of the proposed rule change is to modify OCC's Hedge Program, under which OCC operates a centralized facility for clearing stock loan/borrow transactions between OCC clearing members. In order to provide enhanced risk management while maintaining the flexibility of the current program, OCC proposes to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

OCC's Hedge Program is intended to facilitate stock lending transactions among OCC's clearing members. Clearing members effecting stock loan/borrow transactions through the Hedge Program obtain the advantages of centralized clearing of those transactions as well as reduced credit risk through the substitution of OCC as the counterparty in all transactions. Unless a clearing member has designated an account as margin-ineligible for purposes of the Hedge Program, stock loan and borrow positions are margined by OCC's TIMS<sup>3</sup> margin system using the same basic risk assessment procedures that are used for positions in options or futures. For many clearing members, this results in an important advantage of the Hedge Program. By taking into consideration the reduction in risk where stock loan/borrow positions are on the opposite side of the market from option positions on the same underlying stock, the margin system will calculate a reduced margin requirement for the account containing the offsetting positions.<sup>4</sup>

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

<sup>3</sup> The Theoretical Intermarket Margin System, known as TIMS, uses advanced portfolio theory to recognize economically and statistically reasonable hedges among various positions and to correctly assess the dollar risk of those positions.

<sup>4</sup> While similar offsets may exist between positions in index options, on the one hand, and a group of stock loan/borrow positions that are identified as baskets comprised of constituent securities in the index, the stock borrow basket/stock loan basket feature of the Hedge Program, although provided for in the OCC By-Laws and Rules, has not been placed into operation for systems reasons. OCC is proposing in this filing to add an interpretation following Section 2 of Article

Continued

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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