2. Cash in the Joint Accounts would be invested in Short-Term Investments as directed by KAM (or, in the case of Cash Collateral, Key Trust, at the direction of KAM). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Investment Account would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Investment Account in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Investment Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets in the Joint Account.

6. KAM would administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its existing or any future investment advisory or sub-advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

8. The Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. The Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. KAM and/or the custodian of each Participant will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's pro rata share of each investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with section 31 of the Act and rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (i) KAM believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. KAM may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants in the Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if KAM cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition, or if such investment would otherwise be considered illiquid if held by a money market fund.

13. Not every Participant participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Participant's cash is applied to a particular Joint Account, the Participant will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with monies contributed by the Participant.

Securities Lending

14. The securities lending program of each Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

15. The approval of the Board, including a majority of the Disinterested Trustees, shall be required for the initial and subsequent approvals of Key Trust's service as lending agent for each Fund, for the institution of all procedures relating to the securities lending program of the Funds, and for any periodic review of loan transactions for which Key Trust acted as lending agent.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2250 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40969; File No. SR–CBOE–98–23]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 Relating to an Elimination of Position and Exercise Limits for Certain Broad-Based Index Options

January 22, 1999.

I. Introduction

On June 11, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a two year pilot program eliminating position and exercise limits for certain broad-based index options.

The proposed rule change was published for comment in the **Federal Register** on July 9, 1998.[3] CBOE filed amendments to the proposed rule change on August 19, 1998, November 13, 1998, and January 21, 1999, respectively.[4] One comment letter was received on the proposal.[5] This order approves the proposal, as amended.

II. Description

CBOE proposes to eliminate position and exercise limits for certain broad-based index options on a two year pilot basis. Specifically, CBOE proposes to eliminate position and exercise limits for SPX, OEX, and DJX options.[6] The proposal would also apply to FLEX broad-based index options on SPX, OEX, and DJX. These indexes will be subject to new reporting thresholds.[7] OEX, SPX and all FLEX broad-based index options will be subject to a 100,000 contract reporting requirement and DJX options, which are 1/10th the size of a full value index contract, will be subject to a 1 million contract reporting threshold. These reporting thresholds reflect an increase from the current levels (*i.e.*, 45,000 for SPX and 65,000 for OEX).[8] The proposal also reiterates that the Exchange has the authority, pursuant to CBOE Rule 12.10, to impose additional margin as it deems necessary upon an account maintaining an under-hedged option position in SPX, OEX, DJX or FLEX options on these indexes. Finally, three months prior to completion of the pilot program, CBOE will provide a report to the Commission, including data for the first eighteen months of the pilot. The report will detail the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. The report will also discuss whether any problems resulted from the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.

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, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Commission believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[11] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 40158 (July 1, 1998), 63 FR 37153.

[4] *See* Letter to Christine Richardson, Attorney, Division of Market Regulation, Commission, from Timothy Thompson, CBOE, dated August 18, 1998 (''Amendment No. 1''). CBOE's original submission proposed to eliminate position and exercise limits for all broad-based index options on a permanent basis. Amendment No. 1 limited the proposal to a two year pilot program. Amendment No. 1 also limited the proposal to those broad-based indexes meeting the following criteria: (1) a total capitalization of at least $2 trillion or (2) an average capitalization of at least $15 billion. Amendment No. 1 also stated that, near the end of the program, CBOE would provide a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. The report would also indicate whether any problems resulted from the no limit approach and provide any other information that may be useful in evaluating the effectiveness of the pilot program.

See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Mary Bender, CBOE, dated October 28, 1998 (''Amendment No. 2''). Superseding the index criteria set forth in Amendment No. 1, Amendment No. 2 limited the proposal to three specific broad-based indexes. Specifically, the proposal was limited to options on the S&P 500 (''SPX''), options on the S&P 100 (''OEX''), and options on the Dow Jones Industrial Average (''DJX''). Amendment No. 2 also clarified that OEX and SPX options would be subject to a 100,000 contract reporting threshold requirement and DJX options, 1/10th the size of a full value index contract, would be subject to a 1 million contract reporting threshold requirement. Amendment No. 2 also stated that the contract thresholds, which would trigger an inquiry into whether additional margin should be imposed, were being changed to 100,000 contracts for OEX and SPX options and 1 million contracts for DJX options.

See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Mary Bender, CBOE, dated January 20, 1999 (''Amendment No. 3''). Amendment No. 3 deleted the margin review thresholds proposed in Amendment No. 2. Amendment No. 3 also clarified that the elimination of position limits for FLEX broad-based index options will apply only to FLEX options on the SPX, OEX and DJX, and not to all broad-based index options as originally proposed. Furthermore, SPX, OEX and DJX FLEX options contracts will be subject to a 100,000 reporting requirement, and DJX will be subject to a 1 million contract reporting thresholds. Language was also added to reflect that the Exchange has the authority, pursuant to CBOE Rule 12.10, to impose additional margin upon and account maintaining an underhedged FLEX SPX, OEX or DJX option position. Finally, Amendment No. 3 specified that that CBOE would provide a report to the Commission detailing the impact of the pilot program no later than three months prior to the expiration of the two year pilot program, containing certain data from the first eighteen month period of the pilot.

[5] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Kathryn N. Natale, Deputy General Counsel/Director of Compliance-Americas, Credit Suisse First Boston, dated September 23, 1998 (''CSFB Letter''). CSFB general supported the proposal.

[6] The current position limits for SPX, OEX and DJX are 100,000 contracts, 150,000 contracts, and 1,000,000 contracts, respectively. *See* CBOE Rule 24.4.

[7] Reporting thresholds are the contract levels at which members are required to report certain information regarding customer positions to the Exchange.

[8] Currently, DJX is not subject to an index reporting requirement. Because DJX is part of the proposal, CBOE is imposing new reporting requirement for DJX options.

[9] *See* 15 U.S.C. 78f(b). In approving this rule change, the commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits); 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–91–13) (order approving an increase in Institutional Index Options position and exercise limits).

[11] This gradual approach to increasing position limits is evident with both the SPX and OEX. *See* Exchange Act Release Nos. 37676 (September 13, 1996), 61 FR 49508 (September 20, 1996) (order approving SR–CBOE–96–01; increasing position limits for the SPX from 45,000 to 100,000 contracts); 39789 (December 24, 1997), 63 FR 276 (January 5, 1998) (order approving SR–CBOE–97–11; increasing position limits for the OEX from 75,000 to 150,000 contracts).

the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[12]

The Commission has carefully considered the CBOE's proposal. At the outset, the Commission notes that it still believes the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the current experience with the trading of index options as well as the surveillance capabilities of the CBOE have made it permissible to consider other, less prophylactic alternatives to regulating the index options market while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets. At this time, the Commission believes that it is appropriate to allow for an elimination of position and exercise limits for certain broad-based index options on a two-year pilot basis.

The Commission believes that an elimination of position and exercise limits for certain broad-based index options on a pilot basis is appropriate for several reasons. Overall, the Commission believes that the pilot will allow the CBOE to allocate certain of its surveillance resources differently, focusing on enhanced reporting and surveillance of trading to detect potential manipulation and risky positions that may unduly affect the cash market, rather than focusing on the strict enforcement of position limits. Although this regulatory approach deviates from the current structure that has been in place since the beginning of index options trading, the Commission believes that the enhanced reporting and surveillance CBOE is providing, as well as the fact that the pilot is limited to the CBOE's three most highly capitalized and actively traded index options, provides a sound basis for approving a two year pilot program eliminating position and exercise limits.

The Commission notes first that the proposal is limited to options on three broad-based indexes, the SPX, OEX, DJX, and FLEX options on those indexes. The Commission believes that the enormous capitalization of and deep, liquid markets for the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[13] Removing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, eliminating position and exercise limits for these specified indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges).[4] Furthermore, eliminating position and exercise limits for the SPEX, OEX and DJX options will alleviate the regulatory burdens related to the current index hedge exemption, which involves a daily monitoring of positions and reports to the Exchange at the current levels.

Third, the Commission believes that financial requirements imposed by CBOE and by the Commission adequately address concerns that a CBOE member or its customer may try to maintain an inordinately large unhedged position in a broad-based index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[15] CBOE also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted. Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and CBOE's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[16] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the SPX, OEX, and DJX options on a two-year pilot basis will better allow CBOE to compete with the OTC market.

Fifth, the Commission believes that CBOE has adopted important enhanced surveillance and reporting safeguards that will allow it to detect and deter trading abuses arising from the elimination of position and exercise limits for SPX, OEX, DJX, and FLEX options on those indexes. These safeguards will also allow CBOE to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, CBOE will subject SPX, OEX and FLEX options on those indexes to a 100,000 contract hedge reporting requirement, and DJX, which is one-tenth the size of a full value index contract, and FLEX options on the DJX will be subject to a 1 million contract

[12] *See* H.R. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978).

[13] SPX is a capitalization-weighted index composed of 500 stocks from a broad range of industries. As of August 1998, the total market capitalization value for SPX was $8.5 trillion. *See* Amendment No. 1. OEX is a capitalization-weighted index composed of 100 stocks from a broad range of industries. As of August 1998, the total market capitalization value for OEX was $3.8 trillion. *Id.* DJX is a price-weighted index composed of 30 of the largest, most liquid New York Stock Exchange-listed stocks. As of August 1998, the total market capitalization value for DJX was $2.2 trillion. *Id.*

In addition, the average trading volume for the underlying components of these indexes for the six months preceding January 20, 1999, demonstrates the substantial liquidity of the index components as a group. The average trading share volume underlying the SPX is 757.5 million shares. The average trading share volume underlying the OEX is 244.3 million shares. Finally, the average trading share volume underlying the DJX is 94.77 million shares. Telephone call between Patricia Cerny, CBOE, and Christine Richardson, Commission, on January 21, 1999.

[14] CSFB notes that many institutional traders conduct substantial hedging activity similar to that of the listed options market in other markets that are not restricted by position and exercise limits, *e.g.*, by trading off-shore or in the U.S. treasury bond futures and Eurodollar futures market. *See* CSFB Letter.

[15] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(−) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[16] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997)(adopting Risk Based Haircuts), and CBOE Rule 24.11 *Margins.*

hedge reporting threshold.[17] Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account of for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement. Although the new reporting thresholds are higher for SPX and OEX, the new levels will enable CBOE to allocate its surveillance resources on those accounts maintaining larger, potentially riskier, positions. CBOE has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission also believes that CBOE's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of CBOE's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[18]

Finally, the Commission notes the lack of any discernible problems at existing levels. Although it is difficult to compare a market with position limits and one without, the Commission notes that the lack of any significant problems at existing levels, which are relatively high for these three index options compared to other similar products does provide some basis for going forward with the CBOE's proposal. The Commission further believes that, if problems were to occur during the pilot period, the enhanced market surveillance of large positions should help CBOE to take the appropriate action in order to avoid any manipulation or market risk concerns.

With regard to the elimination of position and exercise limits for FLEX options on the SPX, OEX and DJX, the Commission believes that, given the size and sophisticated nature of the FLEX options market for these indexes, along with the reporting requirements, eliminating position and exercise limits for FLEX options on the SPX, OEX and DJX for a two-year pilot period should not substantially increase manipulative concerns.

Notwithstanding the protections that have been built into CBOE's proposal, the Commission believes a prudent approach is warranted with respect to the elimination of position limits for these indexes. In this regard, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the effected broad-based indexes. To address this concern, the Commission is approving the proposal for a two-year pilot period and limiting the proposal to SPX, OEX, DJX options, and FLEX options on those indexes.[19] Furthermore, three months prior to the end of the pilot program, CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.[20] The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by restricting the elimination of position and exercise limits for certain broadbased index options to a two-year pilot period, the proposed rule change is more restrictive than the original proposal, which was published for the entire twenty-one day comment period and generated only one response.[21] Amendment No. 1 also stated that CBOE will provide a report to the Commission three months prior to the end of the pilot period,[22] detailing any resulting problems, as well as the size and different types of strategies employed with respect to positions established in those classes of options not subject to position limits. This report will help CBOE and the Commission to assess the effects of eliminating position and exercise limits on the effected index options. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.[23]

The Commission finds good cause to approve Amendment No. 2 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 limited the proposal to three specific broad-based indexes—SPX, OEX, and DJX options. By restricting the elimination of position and exercise limits to SPX, OEX, and DJX options, the proposed rule change is more restrictive than the original proposal, which was published for the entire twenty-one day comment period and generated only one response.[24] Amendment No. 2 also imposed new reporting thresholds on members holding large positions in the effected options. These reporting requirements will better enable CBOE to detect and deter trading abuses arising from the elimination of position and exercise limits. In addition, the Commission notes that CBOE's proposal reiterates the Exchange's ability to impose margin and/or assess capital charges an important safeguard to address concerns regarding potential manipulation or other market disruptions. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission believes that deleting the proposed margin review thresholds of 100,000 contracts for SPX and OEX and 1 million for DJX is appropriate to avoid possible a misinterpretation that the

[17] The current hedge reporting thresholds for SPX and OEX are 45,000 contracts and 65,000 contracts, respectively. DJX is not currently subject to a reporting requirement.

[18] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[19] *Cf.* Exchange Act Release No. 30932 (September 9, 1997), 62 FR 48683 (September 16, 1997) (order approving the elimination of position and exercise limits for FLEX equity options on a two year pilot basis).

[20] *See* Amendment No. 1.

[21] *See* CSFB Letter.

[22] *See* Amendment No. 3.

[23] The Commission notes that Amendment No. 1 also limited the proposal to all broad-based indexes meeting the following criteria: (1) a total capitalization of at least $2 trillion or (2) an average capitalization of at least $15 billion. Although this provision narrowed the application of the proposed rule change, at the request of the Commission, CBOE filed Amendment No. 2 which replaced this provision and further narrowed application of the proposed rule change to SPX, OEX, and DJX options.

[24] *See* CSFB Letter.

Exchange may only impose additional margin under CBOE Rule 12.10 when these thresholds are reached. Amendment No. 3 clarifies that the Exchange may impose additional margin as it deems necessary. The Commission also believes that narrowing the elimination of position and exercise limits to FLEX options on the SPX, OEX, and DJX, rather than all FLEX broad-based index options is appropriate because it is more restrictive than the original proposal and it will allow the Exchange to focus initially on a smaller number of accounts maintaining positions in FLEX SPX, OEX and DJX options. Amendment No. 3 also appropriately clarifies when the CBOE will provide the Commission with a report concerning the impact of the pilot program. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1, 2 and 3, including whether the proposal 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. 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 inspecting and copying at 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 No. SR–CBOE–98–23 and should be submitted by February 22, 1999.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–98–23) is approved, as amended, on a two-year pilot basis until January 22, 2001.

[25] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2251 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40973; File No. SR–CBOE–98–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees for CBOT Exercisers.

January 25, 1999.

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 30, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 13, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested person.

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

The CBOE proposes to amend certain fees so that these fees are charged to Chicago Board of Trade (''CBOT'') exercise members of CBOE in the same manner that they are charged to other CBOE members. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[26] 17 CFR 200.30–3(a)(12).

[1] 17 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, SEC, dated January 12, 1999. (''Amendment No. 1''). In Amendment No. 1, CBOE described the amount of CBOE dues and the technology fee which the rule change imposes on CBOT Exercisers. Additionally, CBOE summarized the fee waiver provisions of CBOE Rule 3.16(c) and the Agreement entered into on September 1, 1992, between the Chicago Board of Trade and CBOE.

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 statement 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

The purpose of this proposed rule change is to amend certain fees so that these fees are charged to CBOE members that are also members of the CBOT (''CBOT Exercisers'') in the same manner they are charged to the other CBOE members.

Article Five(b) of the CBOE Certificate of Incorporation provides that:

> [E]very present and future member of the [the Board of Trade of the City of Chicago] who applies for membership in the [CBOE] and who otherwise qualifies qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members, or elsewhere. Members of the [CBOE] admitted pursuant to this paragraph (b) shall, as a condition of membership in the [CBOE], be subject to fees, dues, assessments and other like charges, and shall otherwise be vested with all rights and privileges and subject to all obligations of membership, as provided in the by-laws.

CBOE Rule 3.16(c) further provides that for the purpose of entitlement to membership on the CBOE in accordance with Article Fifth(b), the term ''member of the Board of Trade of the City of Chicago'' is interpreted to mean an individual who is either an ''Eligible CBOT Full Member'' or an ''Eligible CBOT Full Member Delegate'' as those terms are defined in the Agreement entered into on September 1, 1992, between CBOT and CBOE (''1992 Agreement''), and shall not mean any other person.

On February 12, 1988, CBOE and CBOT entered into a Joint Venture Agreement (''JV Agreement''). The JV Agreement provided, among other things, that the CBOE would waive dues in a given quarter for CBOT Exercisers who made no trades in CBOE contracts