

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77319; File No. SR-CBOE-2016-016)

March 8, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to Options that Overlie the MSCI EAFE Index and the MSCI Emerging Markets Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 29, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and, for the reasons discussed below, is approving the proposal on an accelerated basis.

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

The Exchange seeks to amend the listing criteria for options that overlie the MSCI EAFE Index and the MSCI Emerging Markets Index (“EAFE options” and “EM options”). The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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

proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On April 8, 2015, the Commission approved CBOE's proposal to list and trade options on the MSCI EAFE Index ("EAFE Index") and the MSCI Emerging Markets Index ("EM Index").<sup>3</sup> Rule 24.2.01(a) sets forth the initial listing standards for EAFE and EM options. Rule 24.2.01(b) sets forth the maintenance listing standards for EAFE and EM options. All of the maintenance listing requirements set forth in Rule 24.2.01(b) are met except for the requirement that the initial listing standard of Rule 24.2.01(a)(7) continues to be met. Rule 24.2.01(a)(7) currently states that Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements ("CSAs") do not, in the aggregate, represent more than: (i) twenty percent (20%) of the weight of the EAFE Index, and (ii) twenty-two and a half percent (22.5%) of the weight of the EM Index. Due to unforeseen circumstances, as described below, the EAFE and EM Indexes no longer meet this requirement; thus, the Exchange is seeking to amend Rule 24.2.01(a)(7) (criteria "No. 7") to raise the CSA percentage for the EAFE and EM Indexes by five percent (5%).

EAFE Index

The EAFE Index consists of the following 21 developed market country indexes:

Australia, Austria, Belgium, Denmark, Finland, France, Germany, Hong Kong, Ireland, Israel,

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<sup>3</sup> See Securities Exchange Act Release No. 74681 (April 8, 2015), 80 FR 20032 (April 14, 2015) (approving SR-CBOE-2015-023).

Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. The EAFE Index consists of large and midcap components, has 928 constituents and “covers approximately 85% of the free float-adjusted market capitalization in each country.”<sup>4</sup>

In order for EAFE options to meet listing criteria No. 7, the Exchange relied on Intermarket Surveillance Group (“ISG”)<sup>5</sup> membership<sup>6</sup> as well as several CSAs<sup>7</sup> that the Exchange has entered into with relevant stock exchanges. One of the CSAs that the Exchange relied upon was the CSA with the Association of Swiss Exchanges (the “Association”), which is the predecessor to SIX Swiss Exchange (“SIX Swiss”). However, CBOE was recently informed by SIX Swiss that the Association’s activities have ceased and that SIX Swiss was unable to find evidence of a transfer of the CSA to SIX Swiss. The Exchange has been in contact with SIX Swiss in an attempt to enter into a new CSA, but the Exchange has thus far been unable to execute a new CSA with SIX Swiss. The component securities of the EAFE Index that trade on SIX Swiss represent approximately 9.5% of the weight of the EAFE Index. When relying on the

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<sup>4</sup> See EAFE Index fact sheet (dated January 29, 2016) located at: [http://www.msci.com/resources/factsheets/index\\_fact\\_sheet/msci-eafe-index-usd-price.pdf](http://www.msci.com/resources/factsheets/index_fact_sheet/msci-eafe-index-usd-price.pdf).

<sup>5</sup> The ISG “is comprised of an international group of exchanges, market centers, and market regulators.” See Intermarket Surveillance Group website, available at <https://www.isgportal.org/home.html>. The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list identifying the current ISG members is available at: <https://www.isgportal.org/home.html>.

<sup>6</sup> The component securities that represent a majority of the weight of the EAFE and EM Indexes are traded on exchanges that are members of ISG.

<sup>7</sup> For the EAFE and EM Indexes, the CSAs are in the form of Memorandum of Understanding (“MOUs”) or information sharing agreements.

CSA with the Association, the non-U.S. component securities (stocks or ADRs) that are not subject to CSAs do not, in the aggregate, represent more than 20% of the weight of the EAFE Index. Currently, without relying on the CSA with the Association, the non-U.S. component securities (stocks or ADRs) that are not subject to CSAs do not, in the aggregate, represent more than approximately 24.5% of the weight of the EAFE Index. Thus, the Exchange is seeking to amend listing criteria No. 7 for EAFE options to raise the percentage of non-U.S. component securities that do not need to be subject to CSAs from twenty percent (20%) to twenty-five percent (25%).

The Exchange represents that raising the percent will not have an adverse impact on the Exchange's surveillance program. The Exchange represents that it will still have an adequate surveillance program in place for EAFE options and will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in EAFE options.

Furthermore, the EAFE Index is a broad-based index with 928 constituents. The component stocks of the EAFE Index have a market capitalization of 11,444,154.78 (USD Millions) with an average market capitalization per constituent of 12,332.06 (USD Millions). Additionally, the component stocks have an average daily volume of over 5 billion with an average daily volume per constituent of over 5 million. Also, the largest constituent in the EAFE Index currently only accounts for 2.04% of the weight of the EAFE Index. Given the high number of constituents and capitalization of the EAFE Index and the deep and liquid markets for the securities underlying these indexes, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced.

EM Index

The EM Index consists of the following 23 emerging market country indexes: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates. The EM Index consists of large and midcap components, has 837 constituents and “covers approximately 85% of the free float-adjusted market capitalization in each country.”<sup>8</sup>

In order for EM options to meet listing criteria No. 7, the Exchange relied on ISG membership as well as several CSAs that have been entered into with relevant stock exchanges. One of the CSAs that the Exchange relied upon was the CSA with Bolsa de Valores de Sao Paulo (“BOVESPA”), which is the predecessor to Bolsa de Valores Mercadorias e Futuros (“BM&FBOVESPA”). However, CBOE was recently informed by BM&FBOVESPA that a Brazilian law prevents BM&FBOVESPA from providing information to CBOE under the CSA. The component securities of the EM Index that trade on BM&FBOVESPA represent approximately 5.5% of the weight of the EM Index. When relying on the CSA with BOVESPA the non-U.S. component securities (stocks or ADRs) that are not subject to CSAs do not, in the aggregate, represent more than approximately 22.5% of the weight of the EM Index. Currently, without relying on the CSA with BOVESPA, the non-U.S. component securities (stocks or ADRs) that are not subject to CSAs do not, in the aggregate, represent more than approximately 24.5% of the weight of the EM Index. Thus, the Exchange is seeking to amend listing criteria No. 7 for EM options to raise the percentage of non-U.S. component securities that do not need

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<sup>8</sup> See EM Index fact sheet (dated January 29, 2016) located at: [http://www.msci.com/resources/factsheets/index\\_fact\\_sheet/msci-emerging-markets-index-usd-price.pdf](http://www.msci.com/resources/factsheets/index_fact_sheet/msci-emerging-markets-index-usd-price.pdf).

to be subject to CSAs from twenty-two and a half percent (22.5%) to twenty-seven and a half percent (27.5%).<sup>9</sup>

The Exchange represents that raising the percent will not have an adverse impact on the Exchange's surveillance program. The Exchange represents that it will still have an adequate surveillance program in place for EM options and will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in EM options.

Furthermore, the EM Index is a broad-based index with 837 constituents. The component stocks of the EM Index have a market capitalization of 3,219,779.13 (USD Millions) and average market capitalization per constituent of 3,846.81 (USD Millions). Additionally, the component stocks have an average daily volume of over 25 billion with an average daily volume per constituent of over 30 million. Also, the largest constituent in the EM Index currently only accounts for 3.29% of the weight of the EM Index. Given the high number of constituents and capitalization of the EM Index and the deep and liquid markets for the securities underlying these indexes, the concerns for market manipulation and/or disruption in the underlying markets are greatly reduced.

### Conclusion

EAFE and EM options are currently listed for trading on CBOE. The Exchange generally adds new series after an expiration, which allows trading to commence in the new series on the first trading day after the expiration date. The Exchange currently lists EAFE and EM options that expire in February, March, April, June, September, and December. Additional

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<sup>9</sup> The Exchange notes that the iShares MSCI Emerging Markets ETF ("EEM"), which is also based on the EM Index, is only required to have 50% of the component securities subject to CSAs. See Securities Exchange Act Release No. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR-Amex-2006-43).

series, specifically EAFE and EM options that expire in May, are scheduled to be added after expiration on March 18, 2016, which will allow trading to commence in the additional series on the next trading day of March 21, 2016. Without this amendment, EAFE and EM options cannot meet the continuing listing criteria of Rule 24.2.01(b), specifically criteria No. 7, which will prevent the Exchange from adding the EAFE and EM options that expire in May.<sup>10</sup> The inability to add the EAFE and EM options that expire in May would be a detriment to market participants seeking to hedge positions in exchange-traded funds (“ETFs”) based on the EAFE and EM indexes (“EFA” and “EEM,” respectively), options on EFA and EEM, EAFE and EM futures, and European-traded derivatives on the EAFE and EM Indexes. Additionally, to the extent market participants want to roll a position in EAFE and EM options that expire in April to a position that expires in May, they will be prevented from doing so without this amendment.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>11</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove

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<sup>10</sup> Rule 24.2.01(b)(2) states that “[i]n the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act.’

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that both the EAFE Index and the EM Index are not easily susceptible to manipulation. Both indexes are broad-based indexes and have high market capitalizations. The EAFE Index is comprised of 928 component stocks, the component stocks have a market capitalization of 11,444,154.78 (USD Millions) and average daily volume of over 5 billion, and no single component comprises more than 3.5% [sic] of the index, making it not easily subject to market manipulation. Similarly, the EM Index is comprised of 837 components stocks, the component stocks have a market capitalization of 3,219,779.13 (USD Millions) and average daily volume of over 25 billion, and no single component comprises more than 3.5% of the index, making it not easily subject to market manipulation. The purpose of a CSA is to allow the Exchange to investigate manipulation if it were to occur on a foreign exchange at which one of the component securities trades. However, as described above, the EAFE and EM Indexes are unlikely to be susceptible to manipulation; thus, raising the CSA percentage for the EAFE and EM Indexes by only five percent (5%) is unlikely to affect the Exchange's ability to investigate manipulation.

Additionally, the iShares MSCI EAFE and iShares MSCI Emerging Markets ETFs are actively traded products, as are options on those ETFs. Because both indexes have large numbers of component securities, are representative of many countries and trade a large volume with respect to ETFs and options on those ETFs, the Exchange believes that the revised listing requirements are appropriate to trade options on these indexes. The Exchange also represents that it has an adequate surveillance program in place for EAFE and EM options.



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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes the proposed rule change will allow the continued listing and trading of EAFE and EM options, which enhances competition among market participants and provides different types of options to compete with domestic products such as EFA and EMM [sic], which seek to track the EAFE and EM Indexes, respectively, EFA and EEM options, EAFE and EM futures and European-traded derivatives on the EAFE Index and the EM Index to the benefit of investors and the marketplace. For all the reasons stated above, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition among similar products.

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. 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2016-016 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-016, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In order to list options on the EAFE and EM indexes, CBOE Rule 24.2.01(a)(7) requires that any non-U.S. component securities that are not subject to CSAs must not, in the aggregate, represent more than: (i) twenty percent (20%) of the weight of the EAFE Index, and (ii) twenty-two and a half percent (22.5%) of the weight of the EM Index. The Exchange proposes to raise the percentage of non-U.S. component securities that do not need to be subject to CSAs to twenty-five percent (25%) for the EAFE Index and twenty-seven and a half percent (27.5%) for the EM Index. The Exchange stated that both indexes are broad-based indexes, have high market capitalizations, and have components with high trading volume. Given the high number of constituents and the overall high capitalization of the EAFE and EM Indexes and the deep and liquid markets for the securities underlying these indexes, the Exchange believes that the concerns for market manipulation or disruption in the underlying markets are greatly reduced. Therefore, the Exchange believes that a five percent increase would not likely impact its ability to investigate manipulation in these products. Additionally, in its filing, the Exchange

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<sup>13</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

represented that it will maintain an adequate surveillance program for EAFE and EM options and will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in these products. Based on these representations, the Commission believes the modest increase in the applicable percentages of non-U.S. component securities that do not need to be subject to CSA requirements is not likely to have a material effect on CBOE's ability to surveil for potential manipulation in EAFE and EM options. Therefore, the Commission believes that approval of this proposal is appropriate.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication of the notice thereof in the Federal Register. The Exchange stated that accelerated approval of its proposal will allow CBOE to add new series of EAFE and EM options that expire in May (which would be listed after the March expiration). The Exchange believes that the inability to add additional series in EAFE and EM options would be a detriment to market participants seeking to hedge positions in EFA and EEM, options on EFA and EEM, EAFE and EM futures, and European-traded derivatives on the EAFE and EM Indexes. Additionally, the Exchange stated that, without accelerated approval of its proposal, market participants would be unable to roll a position in EAFE and EM options that expires in April to a position that expires in May. The Commission believes that good cause exists for accelerated approval of the proposed rule change because it raises no novel issues and the modest increase in the applicable percentages of non-U.S. component securities that do not need to be subject to CSA requirements is not likely to impose a material change in CBOE's ability to surveil for potential manipulation in EAFE and EM options or adversely affect market participants. The Commission further believes that approval of this proposal on an accelerated basis should benefit investors by creating, without undue delay, additional competition in the

market for these and similar products. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2016-016) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Robert W. Errett  
Deputy Secretary

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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