

believes the benefits identified by the Commission in connection with trading PDRs in $\frac{1}{32}$'s will be further enhanced by trading MidCap SPDRs in $\frac{1}{64}$'s.⁵ The Amex believes that trading MidCap SPDRs in $\frac{1}{64}$'s should further reduce price fluctuations based on the underlying index for the particular issuance (*i.e.*, the S&P MidCap 400 Index). According to the Exchange, trading MidCap SPDRs in $\frac{1}{64}$'s should benefit retail customers, institutions, and other market participants that invest in or trade these PDRs. In addition, the expected result of a narrower quotation spread in MidCap SPDRs should make such securities more useful instruments for institutional arbitragers and other market professionals who may hedge their positions in futures or other derivative markets.⁶

The Exchange will issue an "Information Circular" to members and member organizations relating to trading MidCap SPDRs in $\frac{1}{64}$'s prior to commencement of such trading.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest.

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

The Amex believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

⁵ As the Commission noted in approving the trading of SPDRs in $\frac{1}{64}$'s, another market could seek to commence trading in PDRs; however, the Intermarket Trading System ("ITS") does not currently accommodate quotes in $\frac{1}{64}$'s. See Securities Exchange Act Release No. 33900, *supra* note 2. The Exchange would discuss with the ITS Operating Committee or other ITS participants appropriate modifications to ITS to permit trading of PDRs in fraction of $\frac{1}{64}$'s, should another market seek to initiate such trading. The Exchange notes, however, that other regulatory issues (*e.g.*, the need for a market seeking to trade PDRs to adopt a rule comparable to Amex Rule 1000, Commentary .01) would also need to be addressed prior to the commencement of PDR trading in other markets.

⁶ As noted above, ITS currently is not capable of accommodating quotes in $\frac{1}{64}$'s. See *id.* Consequently, if other securities exchanges or national securities associations desire to list and trade MidCap SPDRs, the Commission expects the Amex to discuss with ITS and other ITS participants the means by which ITS would be modified to accommodate such trading.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of Amex Rule 127, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-95-16 and should be submitted by June 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35695; File No. SR-CBOE-95-06]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the CBOE Retail Automatic Execution System

May 9, 1995.

I. Introduction

On January 18, 1995, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to modify the operation of the CBOE's Retail Automatic Execution System ("RAES"). The proposed rule change would grant senior staff in the Exchange's Control Room the authority to turn off RAES in the event of a system malfunction that affects the Exchange's ability to disseminate or update market quotes.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 23, 1995.³ No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

CBOE proposes to grant the Exchange's Control Room the authority to turn off RAES⁴ if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. Specifically, the proposal would add Interpretation .01 to CBOE Rule 24.15, and Interpretation .03 to Rule 6.8 to grant the senior person then in charge of the Exchange's Control Room the authority to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes. The proposed language for both Interpretation .01 to Rule 24.15, and Interpretation .03 to Rule 6.8 is identical.

When an order is entered on RAES, the system automatically attaches to the order an execution price, determined by the prevailing market quote at the time

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 35388 (February 16, 1995), 60 FR 10134 (February 23, 1995).

⁴ RAES automatically executes public customer market and marketable orders of a certain size against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. A more detailed description of RAES is provided in Securities Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19832 (May 10, 1985).

⁷ 17 CFR 200.30-3(a)(12) (1994).

of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for the bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade; trades are assigned to participating market makers on a rotating basis.

By agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important that the prevailing market quote be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote. In addition, in the event that incorrect quotes are displayed because of a quote dissemination problem, a customer's order could be filled at a price other than the quote the customer sees on display.

CBOE believes that the proposed interpretations to Rules 24.15 and 6.8 are necessary to prevent market makers from being assigned trades based on inaccurate or "stale" market quotes that are the result of a system malfunction, and to prevent customer orders from being filled based on such inaccurate or "stale" market quotes. CBOE also believes that the proposed interpretations are necessary to prevent filling customers' orders at prices different from the prices displayed.

The proposed rule change seeks to address these occurrences by vesting the senior person then in charge of the Exchange's Control Room with the authority to act quickly to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.⁵ Because RAES trades are based on the current disseminated quote, RAES trades would be based on inaccurate or "stale" quotes during a system malfunction that interferes with dissemination of current quote information. The Exchange believes it is important for staff persons in the Control Room to have the authority to

⁵ The CBOE represents that examples of "systems malfunctions" include: outages of the Exchange's autoquote system; communications disruptions between the Exchange and the processor for the Options Price Reporting Authority; and the unavailability of market data from the underlying market due to systems malfunctions in that market or in the communications between that market and CBOE. See Letter from Michael Meyer, Attorney, Schiff, Hardin and Waite, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated February 17, 1995.

turn off RAES because the Control Room will most likely learn of the system malfunction before Floor Officials or other Exchange staff. Consequently, Control Room staff can act in a timely manner to prevent trades based on "stale" market quotes.

If RAES is turned off because of the circumstances described above, the Control Room will disseminate a floor-wide announcement that RAES has been turned off,⁶ and the orders that would have been routed to RAES will be automatically rerouted to the floor broker printer in the trading crowd or to the appropriate member firm booth. Where the order is re-routed will depend upon parameters set by member firms for their customers' orders prior to entering the orders onto RAES.⁷ If the order is not re-routed to the member firm booth, the order will be automatically re-routed to the designated floor broker printer, where the floor broker assigned to that printer will promptly execute the order.⁸

Pursuant to the proposed interpretations, once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room, or the Order Book Official, or the RAES Supervisor may re-start RAES.

III. Commission Finding and Conclusions

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, the requirements of Section 6(b)(5) of the Act.⁹ Specifically, the Commission finds

⁶ The Control Room immediately notifies the floor that RAES has been turned off by (1) transmitting a message to the book staff, floor broker, and member firm booth printers; (2) announcing it via the public address system; (3) posting it on the electronic administrative message board located in the pits; and (4) posting it on the CBOE bulletin board, which is available from any Exchange terminal. Telephone conversation between Tim Watkins, Market Operations Department, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on April 19, 1995.

⁷ According to CBOE, when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin and Waite, Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on February 13, 1995.

⁸ Telephone conversation between Barbara Casey, Market Regulation Department, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on April 18, 1995.

⁹ 15 U.S.C. 78f(b)(5).

that the proposed rule change provides a reasonable mechanism for the CBOE to respond to system malfunctions that impact the integrity of the RAES system.

The Commission notes that this proposal only authorizes the senior person in the Control Room to turn off RAES in circumstances that involve technical system malfunctions affecting the accuracy of the CBOE's automated pricing system. While the Commission understands that it is impractical to enumerate every possible system malfunction that may affect the accuracy of market quotations, it notes, nonetheless, that not all "stale" or inaccurate market quotations are the result of system malfunctions, and that this proposal does not grant senior persons in the Control Room the authority to turn off RAES in these other circumstances.

Finally, the Commission believes that CBOE's alternative routing procedures, as proposed for RAES orders in the event of a system malfunction, should provide small investors an efficient and effective method for order execution in circumstances where RAES is turned off pursuant to this rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-CBOE-95-06), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35696; File No. SR-NSCC-94-19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Settle Certain Mutual Fund Services Transactions in Same Day Funds

May 9, 1995.

On November 8, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-94-19) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on January 3, 1994.² One comment letter

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 35148 (December 23, 1994), 60 FR 155.