

use of telephones to receive incoming calls or to receive orders do not have any anti-competitive effects that are not justified by legitimate regulatory concerns. All members at the OEX trading post will have the same access to telephone communications. This is likely to minimize existing differences among floor members in terms of their ability to communicate with off-floor locations. While some persons off the floor might be competitively advantaged if they were able to place calls directly to the OEX trading post and to place orders directly with members at the post, since most investors would not be able to do this even if it were permitted, there could be questions of unfair competition in the absence of the restrictions that are embodied in the Regulatory Circular. Further, before off-floor customers are permitted to place orders directly with floor members, the Exchange must give further consideration to regulatory concerns, including the possible misuse of non-public information, the need to assure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide audit-trail surveillance over this activity. Until these concerns have been addressed, the Exchange believes that it is justified in limiting the use of telephones at the OEX post as provided in the Regulatory Circular.

(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.

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 self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory. All submissions should refer to File No. SR-CBOE-95-49 and should be submitted by November 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 95-25368 Filed 10-12-95; 8:45 am]

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[Release No. 34-36332; File No. SR-CBOE-95-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., Relating to the Use of Proprietary Brokerage Order Routing Terminals on the Floor of the Exchange

October 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 25, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 3, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.² The Commission

⁵ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² In Amendment No. 1, the CBOE states that Section II.C. of Exhibit 1 to its Form 19b-4 filing incorporates by reference the language from Section 5 of its Form 19b-4 filing ("Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members,

is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to adopt a policy pursuant to its Rule 6.23.³ Under the proposed policy, no member will be permitted to establish, maintain or use on the floor of the Exchange any proprietary brokerage order routing terminal and its related system ("Terminal") without the written approval of the Exchange. No Terminal will be approved unless and until the member who proposes to establish it on the floor of the Exchange has filed with the Exchange an "Application & Agreement for Brokerage/Order Routing Terminals in Trading Crowds" ("Application Agreement"), and, until further action of the Board of Directors of the Exchange, Terminals will be approved solely for the use in the crowd trading S&P 500 Index options ("SPX options") for the routing of orders in SPX options.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

A firm that has applied and been approved for membership on the Exchange (but which has not yet completed the process of becoming an effective member)⁴ has sought Exchange

Participants, or Others"). Letter from Burton R. Rissman, Schiff Hardin & Waite, to Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated October 3, 1995 ("Amendment No. 1").

³ The proposed policy was submitted to the Commission as Exhibit A to the filing and is available from the Commission at the address provided in Part IV of this notice, as well as at the principal office of the CBOE.

⁴ Pursuant to an extension granted by the membership committee, the firm may become an effective member at any time on or prior to

approval to establish and use a Terminal in the SPX options crowd. The Terminal proposed to be used by the firm would be a wireless, hand-held device designed to receive orders entered by the firm or its customers from off the floor. Use of the Terminal would thus permit the firm and its customers to transmit orders electronically directly to one or more of its floor brokers on the floor of the Exchange, including to a broker who is in the trading crowd. The firm's application for use of a Terminal, which is the only such application that has been received to date by the Exchange, has raised a number of issues that the Exchange has determined to resolve as a matter of policy that will be applicable to all members.

On the one hand, the use of Terminals may facilitate the transmission of brokerage orders to the floor of the Exchange, and, if Terminals are successful, they may attract new customers to the Exchange's market and provide competitive advantages to the firms which develop and use them. On the other hand, the proposed Terminals raise a number of important concerns that must be addressed before their use can be approved. The purpose of the proposed rule change is to allow Terminals to be introduced under conditions designed to address the Exchange's concerns, and to allow a determination whether Terminals lead to any unforeseen consequences. The following is a discussion of those concerns and the manner in which they are dealt with by the proposed rule change.

(a) Surveillance, Audit Trails and Compliance

The use of Terminals must be subject to adequate inspection and audit by the Exchange. Moreover, the use of the Terminals must comply with all applicable regulatory requirements.

Paragraph D of the Application Agreement requires an applicant to agree that the use of its Terminal will conform to all applicable laws, the rules, policies and procedures of the Commission and the Exchange, and the provisions of the Application Agreement. Paragraph F of the Application Agreement requires the applicant to agree that the operation and use of all aspects of its Terminal and all orders entered through the Terminal will be subject to inspection and audit by the Exchange at any time upon reasonable notice. It also requires the

applicant to furnish the Exchange with such information as the Exchange may request concerning the Terminal.

(b) Physical, Electrical and Communication Requirements

The space and frequency transmission capacity available on the floor of the Exchange must be fairly allocated among members and other Exchange uses, and the Terminals must be regulated to assure that they do not interfere with other uses. Moreover, although the Exchange will not immediately require the Terminals to interface with other Exchange systems (such as the Exchange trade match and price reporting systems), the Exchange reserves the authority to require such interfaces.

The Application Agreement requires the applicant to specify the necessary physical, electrical and communication requirements of its proposed Terminal and to describe its Terminal system in detail. Paragraph H of the Application Agreement requires the applicant to coordinate the installation, maintenance and use of the Terminal on the trading floor through the Exchange's Telecommunications Department, and Paragraph K permits the Exchange to reallocate the space allocated to the applicant's Terminal. These requirements will allow the Exchange to take into consideration the needs of all members in the allocation of limited space and communication resources and to assure that Terminals do not interfere with one another or with other Exchange systems. In addition, Paragraph K of the Application Agreement expressly acknowledges the authority of the Exchange to require the interface of Terminals with other Exchange systems.

(c) Market-Making Restriction

As a result of the speed with which non-members will be able to transmit orders through a Terminal directly to the point of their trade on the Exchange floor, it may be possible for persons who are not subject to Exchange regulation to perform marketmaking functions from off the floor of the Exchange without being burdened by the cost of maintaining Exchange memberships, or by the obligations imposed on Exchange market makers, including the obligations to trade in the manner prescribed by Exchange Rule 8.7, to respond to calls of Order Book Officials pursuant to Exchange Rule 7.5, and to trade at quotes displayed in the market maker's crowd as required as Exchange Rule 8.51, as well as other obligations, limitations and regulations imposed on Exchange market makers by the

Exchange's rules. The Exchange is concerned that if Terminals can be used to perform market making functions from off the floor of the Exchange, it may become undesirable for Exchange market makers to continue to assume the costs and obligations attendant to being a registered market maker, which, in turn, would harm the liquidity and quality of the Exchange's market and be detrimental to the substantial majority of public investors.

Nevertheless, the purpose of the proposed Terminals is to facilitate the transmission of customer orders to the floor of the Exchange. It is not to permit, whether by design or by accident, the creation of a market-making system for Exchange transactions that will serve as an alternative to the system established under the Exchange's rules.

Accordingly, Paragraph C of the Application Agreement requires the applicant to agree that its Terminal will be used to receive brokerage orders only, that it will not be used to perform a market-making function, and that the Terminal system will be separate from any system which the applicant or an associated person of the applicant may use for market making.

(d) Misuse of Information

The Exchange is concerned that knowledge of the information transmitted through a Terminal system could be misused before that information is disclosed to the trading crowd.⁵ One concern is that the information in an order would not be known to the trading crowd until the applicant or one of its associated persons had interacted with that order—in effect internalizing it—which would be inconsistent with the open auction market principles governing the Exchange's trading system. A second concern is that knowledge of the order information in the system could give the applicant or its associated persons the ability to effect transactions or to change quotes in the Exchange's market or in the markets for the underlying interest or related interests before the information was available in the market.

Accordingly, Paragraph E of the Application Agreement requires the applicant to agree that neither it nor its

⁵The Exchange believes that it would be inconsistent with just and equitable principles of trade for a member or its associated persons to use, or to permit the use of, information in a customer's order prior to the disclosure of that information to the market, except if such use is in accordance with the instructions of the customer and is consistent with Exchange rules. Telephone Conversation between Burton R. Rissman, Schiff Hardin & Waite, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on October 3, 1995.

December 19, 1995. Telephone Conversation between Michael L. Meyer, Schiff Hardin & Waite, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on September 27, 1995.

associated persons (as defined in the Application Agreement) will trade with others transmitted through the Terminal. There are two exceptions to this restriction. First, the applicant or an associated person will be able to trade with an order in the Terminal system if no one wishes to trade with it. Second, the applicant and its associated persons will be able, if they so desire, to participate in the order on the same basis that other market makers who do not have priority participate. Paragraph E also prohibits the applicant and its restricted persons from using for their own benefit any information contained in any order in the Terminal system until that information has been disclosed to the trading crowd.

Initially, the Exchange will limit the use of Terminals to the SPX options trading crowd for routing of orders in SPX options. This limitation will give the Exchange the opportunity to observe how the Terminals are being used in a crowd which is active enough to bring to light any unforeseen problems and to gain experience with the use of Terminals in that trading crowd before the Exchange implements the policy floor-wide.⁶

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act, in particular, in that the proposal is designed to improve communications to and from the Exchange's trading floor in a manner that gives the Exchange necessary monitoring tools and that is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, perfect the mechanisms of a free and open market, and protect investors and the public interest.

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

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition. To the contrary, the Exchange believes that the proposed rule change will promote competition among brokers by encouraging the development and use of new systems designed to facilitate the execution of customer orders, while preserving the benefits of the auction market for all customers. The proposed rule change does place conditions on the use of the proposed Terminals, but the Exchange

believes those conditions are reasonably necessary and appropriate for the protection of investors and in furtherance of the other purposes of the Act.

(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. In a collateral document addressed to the Exchange after the proposed policy was adopted, counsel for the firm referred to above which seeks to establish a Terminal on the Exchange floor stated that the conditions imposed by the Application Agreement were "unauthorized restrictions" and then stated:

In particular, paragraph C of the [Application] Agreement limits the use of the terminals to certain kinds of orders, namely, ones that "do not create a pattern of offering in the aggregate either to make two-sided markets or simultaneously to represent opposite sides of the market in any class of options." In addition to being vague and ambiguous, this restriction lacks any basis in the rules of the Exchange. Equally important, this restriction violates the letter and spirit of the Securities Exchange Act of 1934, as amended, in that it: undermines investor protections; erects impediments to the mechanism of a free and open market and a national market system; inhibits the economically efficient execution of securities transactions; and unnecessarily impairs competition.⁷

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 self-regulatory organization consents, the Commission will:

- (a) by order approve such proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., 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 NW., 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-CBOE-95-48 and should be submitted by November 3, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

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[Release No. 34-36343; File No. SR-CBOE-95-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Amendment to the Exchange's Crossing Rule

October 5, 1995.

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 July 12, 1995, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its crossing rule (Rule 6.74) by adding Interpretation and Policy .05, which will permit Floor Brokers to cross equity option orders in certain limited situations without having to comply with all of the requirements of the rule.

⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² CFR 240.19b-4 (1994).

⁶ The Commission notes that any decision to extend the policy floor-wide would have to be submitted to the Commission as a proposed rule change pursuant to Section 19(b) of the Act.

⁷ See Amendment No. 1 *supra* note 2.