

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, 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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-95-47 and should be submitted by January 2, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-36546; File No. SR-CBOE-95-49]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Telephone on the Floor of the Exchange

December 1, 1995.

#### I. Introduction

On August 25, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission

("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal regarding the adoption of a Regulatory Circular governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index ("OEX") options are traded. The proposed rule change was published for comment and appeared in the Federal Register on October 13, 1995.<sup>3</sup> No comments were received regarding the proposal.<sup>4</sup> This order approves the proposal.

#### II. Description of the Proposal

The purpose of the Regulatory Circular is to permit telephones located at the OEX trading post on the floor of the Exchange to provide members and clerks with access to outside lines for outgoing calls, subject to the conditions set forth in the Regulatory Circular. With the exception of the prohibition on the use of telephones at the OEX trading post to receive incoming calls, these conditions are the same as those the Commission previously approved governing the use of telephones at the equity option trading posts on the floor of CBOE.<sup>5</sup> Because there are no restrictions on where a member may place an outgoing call, telephones at the OEX trading post may be used to place orders in equity or futures markets.<sup>6</sup>

Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor without prior Exchange approval, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to this rule, the

Exchange adopted the Regulatory Circular to permit the installation of outside telephone lines at the OEX trading post, and to adopt conditions governing their use.

The proposed rule change also imposes user fees on members who are approved to use Exchange-installed telephones located at the OEX trading post. The Exchange is adopting these fees pursuant to Exchange Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The conditions imposed by the Regulatory Circular on the use of telephones at the OEX trading post are as follows:

1. The telephones may not be used to receive orders, but may be used to provide quotes that have been publicly disseminated pursuant to Rule 6.43.
2. Members may give their clerks their PIN access code. Although both members and clerks may use the telephones, members will have priority. Each member will be responsible for all calls made using that member's PIN access code.
3. Headsets will not be permitted on the telephones in the post pit. Portable or cellular phones also will not be permitted.
4. Clerks will not be permitted to establish a base of operation utilizing telephones at the OEX post.
5. Members and their clerks using the telephones are required to consent to recording of conversations on telephones at the OEX post.
6. The telephones are to be used for voice service only. Data services (CPC's, fax, etc.) will remain subject to Exchange consent under a separate program.
7. Only outgoing calls may be made on the telephones; incoming calls are not permitted.

The Exchange intends to enforce these conditions as rules of the Exchange, and has advised members that violations may lead to formal disciplinary proceedings.

The Exchange's proposal is limited to outgoing calls only. The Exchange has stated that telephones at the OEX trading post should not be used to receive customer order until it has given further consideration to relevant regulatory issues, including how to provide customers with access to the trading floor on a fair and non-discriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers,

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 36331 (October 3, 1995), 60 FR 53440.

<sup>4</sup> The Exchange previously filed a proposal concerning its OEX trading post telephone policy that became effective upon filing pursuant to Section 19(b)(3)(A) of the Act. Securities Exchange Act Release No. 35725 (May 17, 1995), 60 FR 27575. The Commission received one comment letter objecting to the prohibition on the use of telephones at the OEX post to receive orders. Letter from David C. Bohan, Jenner & Block, to Jonathan G. Katz, Secretary, Commission, dated June 14, 1995. The Commission published the CBOE's current proposal for a full 21 day comment period, and has received no comments.

<sup>5</sup> See Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336.

<sup>6</sup> The telephone policy also allows members to use the floor telephones to provide quotations on OEX options. In using the telephones for this purpose, members may only provide quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

and how to surveil order-taking activity conducted over floor telephones.<sup>7</sup>

### III. Discussion

The Committee 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),<sup>8</sup> in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets. Specifically, the Commission believes the proposed rule change should help to promote improved relationships between the OEX trading crowds and the member firms and facilitate efficient access to underlying markets. Providing procedures whereby members in the OEX options crowd can readily communicate with the off-floor offices of member firms as well as other locations off of the Exchange's trading floor, will allow them to obtain and transmit information more efficiently which may result in benefits to investors by improving execution of orders.

Further, incorporating the procedures contained in the Regulatory Circular into the Rules of the Exchange will enable the Exchange to monitor better the use of the floor telephones and to discipline members for violations of those rules. As noted above, because the proposed telephone policy does not restrict where a member may call, the telephones may be used to place orders in underlying stocks and in futures markets.<sup>9</sup>

With respect to equity-related transactions, while the telephones may give options market makers more immediate access to the market in the underlying securities, the Commission believes that the CBOE's surveillance systems currently in place are adequate to detect and deter any such attempts at manipulation including frontrunning. It also should be noted that the S&P 100 Index, on which OEX options are based, is a capitalization-weighted index of 100 different blue chip stocks. The fact that the value of OEX options is derived from the value of these stocks, combined with the large number of

stocks included in the index, suggests that the type of information that may be available at the OEX trading post is not likely to be significant in predicting future changes in the index.

With respect to futures-related transactions, the Commission believes that the Exchange will be able to conduct adequately surveillance for improper activities as a result of the transaction information provided to the Exchange by the Chicago Mercantile Exchange ("CME") pursuant to the Exchange's surveillance sharing agreement with the CME. Although the surveillance information obtained by the Exchange would not indicate that the floor telephones were used to enter into a potentially improper futures transactions, the Exchange's ability to conduct surveillance for potential manipulation will not be hindered because of the existence of floor telephones at the OEX options posts on the floor of the Exchange. Additionally, the Commission also notes that surveillance information is shared through the Intermarket Surveillance Group ("ISG")<sup>10</sup> which the CME and the Chicago Board of Trade joined as affiliate members in 1990.

The Commission believes that the Exchange's prohibition on the use of telephones to receive incoming calls is justified by legitimate regulatory concerns. Specifically, issues such as the possible misuse of non-public information, the need to ensure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide adequate surveillance over this activity need to be addressed.

The Exchange's proposal also prohibits the use of portable, cellular, and headset telephones on the OEX options trading floor. Prohibiting the use of portable telephones aids in ensuring that market makers will be physically present at the OEX options trading posts where the options classes to which they have been appointed are traded. It is not unreasonable for the CBOE to take measures to ensure the physical presence of market makers at the OEX trading post in order to

promote the maintenance of fair and orderly markets. The Exchange believes that the prohibition should enable it to monitor and control telephone usage at the trading post, and minimize disruption of trading at the post. In addition, the Exchange notes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service. As a result, the Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory concerns.<sup>11</sup>

The Exchange has represented that since the Regulatory Circular was issued and telephones at the OEX options trading post have been installed, the Exchange has not received any complaints concerning their use, nor detected any violations of the procedures set forth in the Regulatory Circular.<sup>12</sup>

Finally, the Commission believes that the CBOE's proposed fees for the use of the telephones are consistent with the requirement under Section 6(b)(4) of the Act that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. CBOE Rule 2.22 allows the Exchange to impose fees on members relating to the use of Exchange facilities or for any services or privileges granted by the Exchange. The Exchange has stated that the proposed fees generally will be the same as those charged for the use of telephones at the equity trading posts.<sup>13</sup>

In summary, because the Commission believes that installing telephones at the OEX options post on the floor of the Exchange may result in benefits to investors by allowing market makers to hedge their options positions more efficiently through improved immediate access to underlying markets while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper equity-related or futures-related trading activity, the Commission finds that the proposed rule change is

<sup>11</sup> This does not imply that the Exchange is prohibited from allowing portable telephones on its floor, subject to appropriate safeguards. Rather, that it is not inconsistent with the Act for the CBOE to prohibit them for the reasons discussed above.

<sup>12</sup> Telephone Conversation between Timothy Thompson, Senior Attorney, CBOE, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 21, 1995.

<sup>13</sup> Specifically, local calls over Exchange telephones will be charged at 10 cents per minute. Long distance calls over Exchange telephones will be charged at a rate 25% greater than the Exchange's direct costs. In addition, the Exchange will charge a \$5 monthly fee for the use of the phones.

<sup>7</sup> The Exchange states that it intends to consider these issues in the near future, and depending on its conclusions, the Exchange may determine to revise or eliminate these conditions pursuant to a subsequent rule filing under Section 19(b) of the Act.

<sup>8</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>9</sup> The proposed rule change also allows members to use the floor telephones for the purpose of providing quotations that have been publicly disseminated pursuant to CBOE Rule 6.43.

<sup>10</sup> ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigate information sharing arrangements in the stock and options market. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stocks and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the Chicago Mercantile Exchange and the Chicago Board of Trade joined the ISG as affiliate members in 1990. See Intermarket Surveillance Group Agreement, July 14, 1983.

consistent with the requirements of the Act.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-CBOE-95-49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36545; File No. SR-DTC-95-18]

### **Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change to Establish a Coupon Collection Service for Municipal Bearer Bonds**

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 18, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-95-18) as described in Items I, II, and III below, which items have been prepared primarily by DTC. On October 30, 1995, DTC filed an amendment to the proposed rule change.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

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

DTC is filing the proposed rule change to establish a coupon collection service program in order to provide its participants with a cost effective method for the collection of interest relating to the coupons from municipal bearer bonds.

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

In its filing with the Commission, DTC 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 Items IV below. DTC has prepared summaries, set forth in sections (A), (B), (C) below, of the most significant aspects of such statements.<sup>3</sup>

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

DTC seeks to establish a coupon collection service in order to provide DTC's participants with a cost-effective method for the collection of interest relating to the coupons from municipal bearer bonds. This service will include collection of coupons which are due in the future as well as past due coupons for DTC eligible and ineligible municipal issues payable in the United States. Past due coupons will be accepted for up to three years after the payable date.

DTC participants will be required to deposit coupons in a standard sealed envelope or "shell" with no more than two hundred coupons contained in any one shell. Only coupons for the same CUSIP number, series, and payable date can be enclosed in any one shell. Mutilated coupons will be required to be guaranteed by the depositing participant and placed into separate shells.<sup>4</sup> DTC will require that each shell contain the following information on its face: (i) CUSIP number; (ii) a description of the issue including municipality, state, purpose, series, date of issue, and maturity date; (iii) payable date; (iv) quantity of coupons enclosed; (v) dollar value of individual coupons; (vi) total shell value; (vii) participant number; and (viii) contact name and telephone number of the depositing participant.

<sup>3</sup>The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup>The validity of the coupon number, bond number, payable date, and payable amount of the mutilated coupon will be guaranteed by the depositing participant by a stamp affixed to the coupon executed by an authorized officer of such participant. In cases of a badly mutilated coupon, DTC may require a letter of indemnity. In the event a paying agent rejects a mutilated coupon, any credit made to the depositing participant's account with respect to such coupon will be reversed. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC; Ann Reich, DTC; and Mark Steffensen, Attorney, Division, Commission (October 17, 1995).

All shells must be accompanied by a complete deposit ticket that includes: (i) DTC participant number; (ii) shell quantity; (iii) total dollar value; (iv) CUSIP number per shell; (v) coupon quantity per shell; (vi) dollar value per shell; and (vii) whether the coupons are payable on a future date or are past due.<sup>5</sup>

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, DTC will immediately reject the entire deposit and will return it to the participant. DTC will neither inspect nor verify the shell contents prior to presentation to the paying agent. The depositing participant is responsible for the integrity of the shell contents. In the event of a coupon shell loss, the participant will be required to provide DTC with a full description (including certificate number) of the coupons contained in the shell.

Coupons may be rejected by the paying agent and returned to the depositing participant for a variety of reasons. The most common reasons for rejection are likely to include: (i) Mixed shell contents including mixed payable dates, mixed series or purposes, or mixed maturity years; (ii) incorrect count of shell contents; (iii) called certificate; (iv) mutilated coupon; (v) stopped certificate;<sup>6</sup> or (vi) issue in default.

DTC will act simply as a conduit between the participant and the paying agent. In this capacity, DTC will pass through rejected shells to DTC participants in the form received from the paying agent together with any paying agent documentation. DTC will neither inspect nor verify the contents of rejected shells. For shells rejected after the payable date, appropriate funds will be debited from the participant's account on the day the rejected coupons are returned to the participant.

Interest for coupons for which the paying agent is located outside of New York City that are deposited at least

<sup>5</sup>When the coupons are due in the future, each deposit ticket can have up to 50 shells attached to it, but each of the attached shells must have the same payable date. For past due coupons, shells with different deposit dates may be listed on the same deposit ticket. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division, Commission (October 26, 1995).

<sup>6</sup>A "stopped certificate" is a certificate for which a stop transfer instruction has been requested. A stop transfer instruction typically is initiated as the result of a lost or stolen stock certificate. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 26, 1995).

<sup>14</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>15</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation ("Division"), Commission (October 26, 1995).