

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁵ and subparagraph (e)(2) of Rule 19b-4(2) thereunder.⁶

At any time within sixty 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR-Amex-95-52 and should be submitted by January 17, 1996.

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. 34-36609; File No. SR-CBOE-95-68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Expansion of the Firm Facilitation Exemption to All Non-Multiple-Listed Exchange Option Classes

December 20, 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 November 16, 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 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 CBOE, pursuant to Rule 19b-4 of the Act, proposes to expand the firm facilitation exemption for position and exercise limits that is currently available for the Standard & Poor's ("S&P") 500 Index ("SPX") options and for interest rate options to all non-multiple-listed Exchange option classes. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and the Commission.

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 the 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 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

The CBOE has previously established firm facilitation³ exemptions for certain option classes, such as for SPX index options (Rule 24.4.03),⁴ and for interest rate options (Rule 23.3(c)).⁵ Exchange member firms have expressed to the CBOE's Department of Market Regulation their belief that the current firm facilitation exemptions, which allow member firms to meet the investing needs of their customers, should be expanded floor-wide. The CBOE has also noted situations in which a member firm was willing to accommodate a large customer order⁶ that could not be filled by the trading crowd, but was prevented from facilitating the order because of a position limit constraint. In light of the above, the CBOE proposes that the firm facilitation exemption be made available in all option classes that are exclusively listed on the CBOE.⁷

The CBOE proposes to expand the firm facilitation exemption by incorporating it as new Interpretation and Policy .06 to Rule 4.11, the general position limit rule which also sets specific limits for equity option classes.⁸ By including the firm facilitation exemption within Rule 4.11, the exemption would be available to equity, broad-based (sector) index, narrow-based (industry) index, Flexible Exchange ("FLEX"), interest rate, and government securities option classes to the extent and at the levels specified therein.⁹

³ According to the CBOE, a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

⁴ See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (approval order for File No. SR-CBOE-92-09).

⁵ See Securities Exchange Act Release No. 33106 (October 26, 1993), 58 FR 58358 (November 1, 1993) (approval order for File No. SR-CBOE-93-21).

⁶ The CBOE notes that the SPX facilitation exemption defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

⁷ The CBOE's general exercise limit provisions (Rule 4.12) also will be amended to increase exercise limits to the levels permitted by the firm facilitation exemption. Several other non-substantive, editorial changes to the position and exercise limit rules, interpretations, and policies will be made as well.

⁸ Through the rule proposal, the exemption provisions contained in Rule 24.4.03 (for SPX index options) and in Rule 23.3(c) (for interest rate options) would be eliminated.

⁹ The CBOE notes that the structuring of the rule proposal in this manner is important because the special position limits for broad-based index options (Rule 24.4), for narrow-based index options (Rule 24.4A), for FLEX Options (Rule 24A.7), for interest rate options (Rule 23.3), and for government

⁵ U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

As is the case with the SPX and interest rate firm facilitation exemptions, Exchange Rule 6.74(b) procedures for crossing a customer order with a firm facilitation order must be followed. In this regard, before a customer order can be crossed with a firm facilitation order, the trading crowd must be given reasonable opportunity to participate. Moreover, only after it has been determined that the trading crowd will not fill the order, may the firm's customer order be crossed with the firm's facilitation order.

In addition, except for the existing SPX and interest rate firm facilitation exemptions which are set at higher levels, the expanded firm facilitation exemption will be twice the standard limit.¹⁰

The CBOE notes that the firm facilitation exemption will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a firm desires to facilitate a customer order in the XYZ option class, which is assumed to be a class of options traded exclusively on the Exchange with a 25,000 contract standard position limit, the firm may qualify for a firm facilitation exemption of up to twice the standard limit (50,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (50,000 contracts), in addition to the 25,000 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 125,000 XYZ contracts on the same side of the market.¹¹

The CBOE notes, however, that the firm facilitation exemption will not extend to all option classes listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the exemption will be extended only to non-multiply-listed option classes.¹²

The CBOE also proposes a new provision with respect to the requirement that the "facilitation firm" hedge the exempted position within five business days. The new provision would allow the facilitation firm to be granted an exemption from this requirement when opposite side of the market contracts are used to hedge the original facilitated customer order. In

this regard, the Department of Market Regulation's staff would be responsible for granting the exemption for the hedge, and the facilitation firm would be required to submit documentation to the regulatory staff as to how the position was hedged.

Lastly, to aid in understanding the scope of the firm facilitation exemption, Interpretation .06 will include both a table and an example showing how the exemption will be applied.

The Exchange believes that expanding the firm facilitation exemption will contribute to the depth and liquidity of the market by allowing those member firms who are willing to commit firm capital the ability to facilitate large customer orders in a wide range of option classes. In approving the firm facilitation exemptions for SPX and interest rate options, the Commission expressed its opinion that providing member organizations with exemptions for the purpose of facilitating large customer orders would better serve the needs of the investing public by distributing the risks of large customer transactions to several market participants. At that time, the Commission also noted that safeguards were built into the exemption to minimize any potential disruption or manipulation concerns. The CBOE believes that these same benefits and assurances are also applicable with respect to the new firm facilitation exemption.

Because the expanded firm facilitation exemption will enhance the depth and liquidity of the market for both members and investors, the Exchange believes that the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

Within 35 days of the 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 CBOE consents, the Commission will:

A. By order approve the 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 at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-95-68 and should be submitted by January 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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securities options (Rule 21.3) each mandate compliance with Rule 4.11.

¹⁰The CBOE notes that this filing does not propose to change the existing SPX and interest rate firm facilitation exemptions.

¹¹50,000 facilitation+50,000 hedge+25,000 standard=125,000 contracts

¹²The CBOE notes, however, that the Intermarket Surveillance Group ("ISG") is currently working on developing such procedures.

¹³17 CFR 200.30-3(a)(12) (1994).