NRC's Home Page (http://www.nrc.gov) and choosing ''Nuclear Materials,'' then ''Business Process Redesign project,'' then ''Library,'' and then ''NUREG–1556, Volume 1.''

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 24th day of June, 1997.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38763; File No. SR–CBOE–96–68]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to RAES Orders That Are Rerouted to the Exchange's Order Routing System

June 24, 1997.

I. Introduction

On November 12, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to specify the trading crowd's firm quote obligations for certain Retail Automatic Execution System (''RAES'') orders rerouted through the Exchange's Order Routing System (''ORS''). On February 28, 1997, the Exchange filed Amendment No. 1 to the rule proposal.[3] On June 13, 1997, the Exchange filed Amendment No. 2 to the rule proposal.[4]

Notice of the substance of the proposed rule change and Amendment No. 1 was provided by issuance of a release[5] and by publication in the **Federal Register**.[6] No comments were received. This order approves the proposed rule change and Amendment No. 1 to the proposed rule change, and approves Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Rule 6.8 to add Interpretation .04 to specify the trading crowd's firm quote obligation for certain RAES orders rerouted through the Exchange's ORS. Specifically, the rule change would provide a price guarantee for the first order to be rerouted at a particularly market when the prevailing market bid or offer equals the best bid or offer on the Exchange's limit order book.[7] This change will permit the same execution for the covered RAES order as if the order had been executed based upon the displayed quote market.

The Exchange states that under ordinary trading conditions, only customer market or marketable limit orders are eligible to be routed to RAES. When RAES receives such an order, the system automatically attaches the execution price to the order. The execution price is determined by the prevailing market quote at the time of the order's entry to the system.[8] A market-maker who is participating in the RAES system will be designated as the contra-broker on the trade, and the trade will be automatically executed against the designated market-maker.

The Exchange states that when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's customer limit order book, the RAES order generally[9] will be rerouted away from RAES on ORS, under existing ORS parameters. According to the Exchange, the rerouting occurs because the rule governing priority of bids and offers, Rule 6.45, gives priority to orders on the Exchange's customer limit order book over any other order at the post. As a result, Exchange rules do not permit a RAES sell order to be filled by the RAES system at a price lower than or equal to the best book bid, nor may a RAES buy order be filled by the RAES system at a price higher than or equal to the best book offer. The Exchange states that when the RAES order is rerouted over the ORS, the rerouted order ordinarily will be routed to a floor broker in the crowd via a printer or Public Automated Routing System (''PAR'') workstation,[10] or will be routed to the firm's booth.[11] Once the floor broker receives the order, it is the broker's responsibility to represent the order in the crowd.

The Exchange proposes to guarantee that the first rerouted RAES order (''RAES kickout'') for up to ten contracts be filled at the bid or offer that existed at the time the order was entered into the RAES system (*i.e.*, the price the order would have received had it traded directly with the customer limit order book).[12] The Exchange defines the first rerouted RAES order in Rule 6.8, Interpretations and Policies .04 as the first order rerouted at a particular market which existed at the time of the order's entry into the RAES system.[13] Therefore, if more than one RAES order is rerouted at approximately the same time and at the same market, the rule change does *not* guarantee that the second order will be filled at the price that existed at the time of the second order's entry into the RAES system.[14] Further, the Exchange states that the rule change would only apply to the first RAES kickout that is routed directly to the trading station.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Timothy Thompson, CBOE, to Janice Mitnick, Commission, dated February 28, 1997 (''Amendment No. 1''). Amendment No. 1 made several changes to the rule proposal in order to clarify the scope of the rule filing and to conform the rule language to reflect the clarifications. In particular, Amendment No. 1 clarifies the trading crowd's firm quote obligation for RAES kickouts and further defines which orders are eligible for the proposed RAES kickout treatment, as discussed more fully herein.

[4] Letter from Timothy Thompson, CBOE, to Janice Mitnick, Commission, dated June 13, 1997 (''Amendment No. 2''). Amendment No. 2 is a technical amendment, clarifying that Rule 8.51(a)(2), which establishes when RAES orders are deemed to reach the trading station, does not apply to RAES orders eligible for the RAES kickout price guarantee pursuant to Interpretation .04 to Rule 6.8.

[5] Securities Exchange Act Release No. 38535 (April 21, 1997).

[6] 62 FR 22982 (April 28, 1997).

[7] *See* Rules 6.8(b) and (c).

[8] A buy order will pay the prevailing market offer and a sell order will sell at the prevailing market bid.

[9] Rule 6.8(b) provides an exception to this rule for options on IBM and other option classes following the determination of special market conditions. *See* Rules 6.8(b) and (c).

[10] A PAR workstation is an automated, computer-based workstation that provides users with the ability to execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating delay inherent in a keyboard-based system.

[11] Whether the order gets routed to the booth or to the trading station is determined by the order routing instructions the broker's firm provides to the Exchange.

[12] The Exchange states that if the market price is better than the guaranteed RAES kickout price when the order is represented in the crowd pursuant to Rule 6.73, the RAES kickout order would be filled at the better market price.

[13] *See* Amendment No. 1, *supra* n.3.

[14] *See* Amendment No. 1, *supra* n.3.

[15] In the case of an order that the firm has chosen to route to the firm's booth, the Exchange believes that the trading crowd should not bear the risk that the price will move away from the price that the

Continued

RAES kickouts not eligible for the RAES kickout price guarantee are ordinarily eligible for firm quote treatment under Rule 8.51 when the order is represented in the trading crowd.[16] Rule 8.51(a)(1) states a trading crowd is required to sell (buy) at least ten contracts at the offer (bid) which is displayed *when* a buy (sell) customer order ''reaches the trading station where the particular option contract is located for trading.'' Because the trading crowd will be expected to fill the first order at the price that existed when the RAES order was re-routed to the trading station, it is important that the floor broker represent the order in a timely fashion.

The Exchange proposes to amend Rule 8.51 to codify the Exchange's current understanding that the firm quote rule generally applies when an order reaches the trading station and is represented in the crowd by a floor broker, except in the case of a rerouted RAES order that is eligible for the RAES kickout price in accordance with Rule 6.8, Interpretations and Policies .04. As proposed in Rule 6.8, Interpretations and Policies .04, rerouted RAES orders that are eligible for the RAES kickout price are deemed to reach the trading station and entitled to firm quote protection of up to 10 contracts when the order is entered into the RAES system.[17]

The Exchange notes that, consistent with the terms of Rule 8.51, the trading crowd would be entitled to change their quotes after the first order of up to ten contracts has been traded at the quoted price. Therefore, the price at which the second (or any subsequent) RAES kickout order would be filled may be better or worse than the RAES kickout price for the first order.

The Exchange generally believes that the public customer should not have to bear the risk that the option price will change adversely during the period between the rerouting of the order to the floor broker via the printer or PAR workstation, and the time the floor broker actually represents the order in the crowd. The Exchange believes that it is appropriate to limit the price guarantee to only the first RAES kickout at a particular market which existed at the time of the order's entry into the RAES system[18] because most RAES kickout situations involve only one order which is kicked out of RAES. In addition, the Exchange believes that in situations where there is more than one kickout at a certain price, the market in these options is likely very busy and floor brokers may as a practical matter be incapable of representing these kicked out orders immediately. In proposing to limit the guarantee to the first RAES kickout order, the Exchange states that it weighed the benefits of this guarantee against the potential disruptive effect of numerous orders kicked out of RAES within a second or two of each other. The Exchange states that if the guarantee were extended to all orders that are kicked out at that price, market-makers would be forced to fill these customer orders at quotes that might no longer reflect current market situations by the time the floor broker was able to represent the orders. The Exchange notes, however, that the orders that do not get filled at the guaranteed RAES kickout price will be entitled to be filled at the disseminated market quotes at the time they are represented in the crowd, which may be better than the guaranteed RAES kickout price.[19]

III. Discussion

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, Section 6(b)(5).[20] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market, and in general, to further investor protection and the public interest.[21]

As a general matter, the Commission believes that RAES-eligible orders should receive efficient, fair, and accurate executions after being rerouted to the trading floor for manual execution. The Commission further believes that this concern must be balanced against the desire to ensure that customer orders on the limit order book are not disadvantaged.

The Commission believes that the proposed rule change reasonably balances these concerns by ensuring greater price protection for RAES kickout orders when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's customer limit order book. The Commission also believes that the price guarantee for the first RAES kickout provides a greater benefit to RAES public customer orders than currently exists, while continuing to ensure that customer orders on the limit order book that touch the market receive executions consistent with time and price priority principles.

The Commission also believes that the proposed rule change is reasonable because RAES kickouts that do not qualify for the RAES kickout price, as described above, will be automatically rerouted to a PAR workstation, a floor broker printer in the trading crowd, or to the appropriate member firm booth, where they can be immediately executed at the then current market quote. The Commission believes, however, that because these public customer orders may be filled at an inferior bid or offer than existed at the time their orders were entered into the RAES system, the Exchange should continue to explore methods to give all customers the benefit provided to the first RAES kickout by this rule change through the development of a customer limit order book which is fully integrated with RAES.

Finally, the Commission believes that it is reasonable for the Exchange to amend its rules to better identify when an order is deemed to have reached the trading station for firm quote protection purposes. In particular, the Commission believes the proposed change to Rule 8.51 appropriately codifies existing firm quote obligations and clearly addresses the proposed exception for RAES kickouts eligible for the RAES kickout price guarantee, as described above.

The Commission finds good cause for approving Amendment No. 2 to the filing prior to the 30th day after the date of publication in the **Federal Register**. Amendment No. 2 to the proposed rule change is a technical amendment, clarifying that Rule 8.51(a)(2), which establishes when RAES orders are deemed to reach the trading station, does not apply to RAES orders eligible for the RAES kickout price guarantee pursuant to Interpretation .04 to Rule 6.8. The Commission believes amendment No. 2 further clarifies and strengthens the Exchange's proposal, as originally intended, and raises no new regulatory issues.[22] Accordingly, the

customer could have received had the order not been rerouted, given the potential greater delay in the order being represented to the crowd. In these cases, the Exchange states the floor broker will be responsible for ensuring that the customer's order is represented in a timely fashion.

[16] In some instances, the firm quote obligation for a particular option may be for other than ten contracts. *See* Rule 8.51(a).

[17] *See* Amendments No. 2, *supra* n.4.

[18] *See* Amendment No. 1, *supra* n.3.

[19] *See* Amendment No. 1, *supra* n.3. In addition, as noted above, the Exchange states that if the current market price is better than the guaranteed RAES kickout price when the first RAES kickout is represented in the crowd, that order would be filled at the current market price.

[20] 15 U.S.C. 78f(b)(5).

[21] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] *See* Amendment No. 2, *supra* n.4.

Commission believes there is a good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–68, and should be submitted by July 21, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–96–68), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17008 Filed 6–27–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38758; File No. SR–NASD–97–43]

Self-Regulatory Organizations; Notice of Filing and immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

June 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as a stated policy, practice, and procedure with respect to the administration and enforcement of NASD rules under Section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s (''Nasdaq'') periodic reclassification of Nasdaq National Market (''NNM'') securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System (''SOES''). Specifically, under the proposal, 592 NNM securities will be reclassified into a different SOES tier size effective July 1, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

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 NASD 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 NASD 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 purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 1997, pursuant to the following established criteria:[2]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 592 NNM securities will be reclassified effective July 1, 1997. These 592 NNM securities are set out in the NASD's *Notice To Members 97–38* (July, 1997).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in

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[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).