

Exchange determines in the interim that the proposed rule change has resulted in a pattern of retail investor participation in FLEX Equity Options, it should notify the Commission's Division of Market Regulation to determine if the minimum closing transaction sizes should be restored to the original levels.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (File No. SR-CBOE-97-10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38837; File No. SR-CBOE-97-24]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to a Reduction of the Quorum Requirements in Uncontested Elections

July 14, 1997.

#### I. Introduction

On May 21, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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 proposed rule change to amend the CBOE's Constitution to reduce the quorum required in uncontested elections. On June 4, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

participation, the Commission requests that the Exchange update its report one year from the implementation date for this rule change.

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

<sup>16</sup> 17 CFR 200.30.3(a)(12).

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

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

<sup>3</sup> See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Debra Flynn, Attorney, Division of Market Regulation, SEC, dated June 3, 1997. In Amendment No. 1, the CBOE replaced all references to "Constitution" change with "Rule" change, clarified the definition of "uncontested elections" by deleting the phrase "for example," and clarified the language in Sections 3.6 and 3.7 of the Constitution.

The proposed rule change was published for comment in the **Federal Register** on June 13, 1997.<sup>4</sup> No comments were received on the proposal. This Order approves the proposal.

#### II. Description of the Proposal

The Exchange conducts an annual election and special meetings of its membership.<sup>5</sup> Currently, at all meetings of Exchange members, including elections, a majority of the membership entitled to vote constitutes a quorum. The Exchange is proposing to amend Section 3.6 of the Constitution to reduce the quorum requirement, in uncontested elections only, from a majority to one-third of the members entitled to vote.<sup>6</sup> Uncontested elections are elections in which each candidate is running for office unopposed. If any candidate for office is opposed, the entire election would be considered contested, and would require a majority for a quorum.

The Exchange is also making a change to Section 3.7 of the Constitution to clarify that this Section governs voting by members on issues other than elections. The quorum requirement will remain a majority of the members entitled to vote on issues arising pursuant to Section 3.7.

#### III. Discussion

After careful review, 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.<sup>7</sup> Specifically, the Commission believes that the proposal, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of

<sup>4</sup> See Securities Exchange Act Release No. 38723 (June 6, 1997), 62 FR 32393 (June 13, 1997).

<sup>5</sup> At annual election meetings, the CBOE membership votes for a slate of candidates proposed by the Nominating Committee for expiring terms and vacancies on the Board of Directors and certain other Exchange Committees, such as the Nominating and Modified Trading System Committees.

<sup>6</sup> In connection with the proposed amendment to the Constitution, the Election Committee stated that its policy under the reduced quorum proposal, if approved, would be to collect ballots and proxies in-person for three trading sessions prior to any meeting at which a vote would be conducted. Any change to this Election Committee policy would need to be approved by the Board of Directors and submitted to the Commission pursuant to Rule 19b-4.

<sup>7</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that reducing the quorum required in uncontested elections should improve the efficiency of the CBOE's election process. A quorum requirement of one-third of the members entitled to vote should demand less of the CBOE's resources than the current majority requirement which, at times, has required considerable Exchange staff time and resources. The Commission believes that the proposed rule change should maximize the use of Exchange resources.

In addition, the Commission notes that the existing quorum requirement will be reduced only for uncontested elections. The Commission believes that Exchange members should be encouraged strongly to vote in contested elections and therefore, it would be inappropriate to reduce the quorum requirement for contested elections. The Commission further believes that in circumstances in which even one nominated candidate is opposed, the more rigid quorum requirement is appropriate to ensure that the Exchange's membership is compelled to consider carefully the candidates.

Finally, the Commission notes that the proposed rule was overwhelmingly approved by the Exchange's membership at the CBOE's most recent Annual Election Meeting, held on December 11, 1996. The membership's approval of the proposal indicates that CBOE's members expect the proposed reduction of the quorum requirement in uncontested elections will not affect adversely either the operations of the Exchange or the membership's interests.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-97-24), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).