to grant these exemptions to advisers having a ''national or multistate practice'' and that ''[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules.'' [6] Applicant notes that Congress chose an assets under management requirement as a rough proxy that would divide responsibilities between the SEC and the states; investment advisers managing $25 million or more of assets under management are more likely to be national investment advisers.

6. Applicant asserts that prohibiting it from registering with the SEC would be a burden on interstate commerce in that applicant would be subject to the regulations and oversight of at least 30 jurisdictions, which would impede applicant's ability to operate its national business on a uniform basis. Applicant states that it is legally obligated to be registered in at least 30 jurisdictions as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant states that the extent of its investment advisory services means that it does not qualify for the national de minimis exemption, as set forth in section 222(d) of the Advisers Act, in at least 30 states because it has provided investment advisory services to more than five clients during the preceding twelve months who are residents of those states.

7. Section 222(d) of the Advisers Act makes state investment advisers statutes inapplicable to investment advisers that do not have a place of business located within that state and, during the preceding twelve month period, have fewer than six clients who are residents of that state.

8. Applicant also asserts that to prohibit it from registered with the SEC would be unfair because applicant's investment advisory business is substantially similar to that of other national investment advisers who are eligible for SEC registration and oversight. Moreover, applicant believes that it would be inconsistent with the purposes of section 203A if it is prohibited from being registered with the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[6] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39418; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 27, 1997, the Chicago Board Options Exchange, Incorporated (''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 Exchange. 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 seeks to amend Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for Joint Back Office (''JBO'') participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at 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 Exchange 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 Exchange 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

1. Purpose

The Exchange proposes to revise Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[2]

In recent amendments to Regulation T,[3] the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure the reasonableness of JBO arrangements.[4] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standard,[5] however, good faith credit has been extended to ''owners'' holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm ''owners'' only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 13.4 will require each JBO participant [6] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 (''Rule 15c3–1'').[7] JBO participants may not claim the

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

[2] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 12.3, as revised, or under the comparable rules of another self-regulatory organization.

[3] 12 CFR 220 *et seq.* Regulation T is entitled ''Credit by Brokers and Dealers.'' The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[4] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[5] Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.11(a)(2).

[6] The proposed rule change allows members and member organizations to establish JBO arrangements with JBO clearing members.

[7] 17 CFR 240.15c3–1.

net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[8] JBO participants will be required to deposit and maintain minimum account equity of $1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report (''FOCUS'') filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of $25 million; [9] or (ii) net capital of $10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, is attributable to options market maker transactions. A JBO clearing firm conducting a primary options market maker business must include the gross deductions calculated for all JBO participant accounts in its ratio of gross options market maker deductions to adjusted net capital.

Further, each JBO clearing member shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. As previously referenced, each clearing member which maintains JBO accounts must require and maintain equity of $1,000,000 for each JBO participant, over all related funds. The clearing member is required to issue a margin call if the JBO participant's account equity falls below the $1,000,000 threshold. Finally, each JBO clearing member will be required to establish and maintain written ownership standards for JBO accounts.[10] The clearing member also must develop risk analysis standards which are acceptable to the Exchange and comply with the requirements of Exchange Rule 15.8.

Margin Requirements. The Exchange proposes to revise Exchange Rule 12.3, Margin Requirements, to permit a member organization to carry the accounts of JBO participants on a good faith margin basis. The JBO accounts must comply with the requirements established in Regulation T, Section 220.11,[11] and Exchange Rule 13.4, as modified above. JBO participants must maintain equity of at least $1,000,000 in their accounts. If the equity falls below $1,000,000, the JBO clearing firm must issue a margin call for additional funds or securities which must be satisfied within 5 business days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Exchange further believes that the proposed rule change is designed to ensure the reasonableness of JBO arrangements in accordance with the FRB's directive in its recent amendments to Regulation T.

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

The Exchange does not believe 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

The Exchange did not solicit or receive written comments 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 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 Exchange 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 argument 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 submissions, 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 persons, 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 240.15c3–1(b)(1).

[9] The term ''tentative net capital'' refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

[10] The Exchange will not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members will possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange will move to correct the impropriety. Telephone conversation between Timothy Thompson, Senior Attorney, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 25, 1997).

[11] 12 CFR 220.11.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).