

2(a)(19) of the Act ("Disinterested Trustees"), will initially and at least annually thereafter, in each year a Registered Fund participates in the insurance arrangement, determine (a) that the Policy is in the best interests of the Registered Fund and its shareholders, (b) that any amounts paid or potentially payable to the Mutual Company by the Registered Fund including, without limitation, the premiums, the special assessable premium, and the Fund Notes, are fair and reasonable to the Registered Fund, (c) after reviewing all claims paid or denied by the Mutual Company, that the settlement of all claims has been reasonable and fair to the Registered Fund, and (d) that any procedures adopted pursuant to condition 3 have been complied with.

2. Any conflicts that may arise concerning the Participating Funds relating to the operation or policies of the Mutual Company will be resolved on an equitable basis by a committee of the Disinterested Trustees of the Registered Funds.

3. The Trustees of each Registered Fund, including a majority of the Disinterested Trustees, will adopt procedures that are reasonably designed to provide that the conditions in the application have been complied with. The procedures will include, without limitation, the guidelines set forth in the Statement of Policy Regarding Coverage, attached as Exhibit D to the application, as it may be amended from time to time.

4. Participation by a Registered Fund in the Mutual Company will be consistent with the policy of the Fund, as recited in its registration statement and reports filed under the Act.

5. The nature and extent of the insurance coverage will be briefly described in each Registered Fund's current registration statement and, if required by GAAP, in each Registered Fund's financial statements. Other than this disclosure, the insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sales of shares of the Registered Funds.

6. Each Registered Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (3) and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Fund participated in the Mutual Company, the first two years in an easily accessible place, a written record relating to the premiums paid and any claims made by the Fund and any action taken by the Mutual Company with respect to the

claim, and the information or materials upon which the determinations described in condition (1) were made. The Mutual Company will make its records available to the Trustees and the staff of the SEC upon request.

7. The Mutual Company will pay FMR for its commitment to cover losses at a rate not to exceed the lowest rate FMR would then be paying a bank for a letter of credit in a comparable amount.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39556; File No. SR-CBOE-97-65]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE") 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 Chicago Board Options Exchange, Inc. ("CBOE or the "Exchange") proposes to amend its policy<sup>1</sup> governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

<sup>1</sup> The two regulatory circulars that govern the use of telephones at the equity trading posts were approved by the Commission on October 28, 1996 [(see SR-CBOE-96-15, Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996)] and on March 2, 1994 [See SR-CBOE-93-24, Securities Exchange Act Release No. 33701 (March 2, 1994)].

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

In its filing with the Commission, CBOE 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 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, Proposed Rule Change

The purpose of the proposed rule change is to amend the policy currently governing the use of telephones at equity option trading posts. The proposed amendment would permit floor brokers at these posts to receive orders, over telephones located at the equity option posts, when (i) those calls are patched through a booth on the floor as further described below and (ii) the order is from U.S. registered broker-dealers. The revised policy will be issued in a regulatory circular. In addition, the Exchange has filed as Exhibit B to the filing a proposed form of application and agreement to be used by members seeking approval to use the telephones at the equity option posts.

##### Orders Entered by Broker-Dealers

The proposed change is the latest in a continual expansion of direct telephone access of orders to the equity option trading posts since a telephone policy was first filed with the Commission in 1993, see SR-CBOE-93-24. The regulatory circular that was the subject of that original filing prohibited any orders from being transmitted over the outside telephone lines at the equity option posts. (At that time and today, orders could and can be transmitted over the intra-floor lines from one point on the Exchange floor to another.) In 1996, the Exchange liberalized its telephone policy in the equity crowds to allow market-makers to place orders over the outside telephone lines directly with floor brokers at the equity option posts.<sup>2</sup> This change allowed market-makers who need to be off the floor to transmit their orders more efficiently.

The current proposed change would expand the ability to transmit orders entered by broker-dealers over

<sup>2</sup> See SR-CBOE-96-15, approved in Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996).

telephones located at the equity option posts<sup>3</sup> where an order is transmitted over the telephones on a three way call involving the following persons at the following locations: (1) a representative of a member broker-dealer or its correspondent firm from a location from off of the Exchange trading floor, (2) a CBOE broker or an associated person of such broker including a Designated Primary Market-Maker ("DPM") acting in his capacity as a floor broker, at a booth on the floor of the Exchange, and (3) CBOE floor broker (including a DPM) or other person authorized to receive an order at an equity trading post on the floor of the Exchange.

In determining to limit the transmittal of orders in this proposal to orders from member broker-dealers and their correspondent firms, the Exchange has adopted the Equity Floor Procedure Committee's recommendation.<sup>4</sup> It is the judgment of this Committee which oversees trading at the equity option posts that it would be best to continue to expand telephone access to the equity option posts on an incremental basis. Because of concerns with the potential for error (and thus liability) in accepting orders from a wide range of customers, the Equity Floor Procedure Committee determined to limit access to this class of broker-dealers only. The requirement that the call must involve a person at a booth on the floor of the Exchange will help to ensure that there is a further record of the order in the event that a dispute arises later in connection with

<sup>3</sup> Equity option posts includes trading stations of both market-makers and Designated Primary Market-Makers where equity options are traded and any other trading stations over which the Equity Floor Procedure Committee has jurisdiction. Persons transacting business in broad-based index options traded at the same posts as equity options will not be subjected to the restrictions of this policy as long as the telephone lines are not used in contravention of this policy in conducting business related to equity options. The EFPC will determine whether a particular narrow-based index option is subject to this policy.

<sup>4</sup> It should be noted that the Exchange filed (see SR-CBOE-95-49) and the Commission approved (Securities Exchange Act Release No. 37487 (July 26, 1996)) a more liberal policy concerning the transmittal of orders over outside telephone lines at the trading post for Standard & Poor's 100 Stock Index options ("OEX"). That policy permits orders to be transmitted from any source provided the broker accepting the order is properly qualified under Exchange rules to accept the order and provided the broker has received approval from the Exchange to accept such orders over the telephone. The Exchange generally has deferred to the judgment of the various Floor Procedure Committees in determining to what extent they want to allow telephone access directly into the trading posts over which they have purview. The Equity Floor Procedure Committee recommended taking a more limited approach than the OEX Floor Procedure Committee but, after gaining experience with this expansion, they may decide to offer access to the same extent as the OEX Floor Procedure Committee.

the order. The Equity Floor Procedure Committee and the Exchange will monitor the policy and determine whether a future expansion in line with the OEX model is appropriate. As with the use of telephones at the OEX trading post, the Exchange intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts by means of customary floor surveillance procedures, including reliance on surveillance by Floor Officials and Exchange employees. Floor brokers accepting orders in this manner would not be required to be qualified pursuant to Exchange Rule 9.1 as with brokers accepting orders of public customers over OEX post telephones because the qualification requirements do not apply to the acceptance of orders from registered broker-dealers. However, the Department of Compliance will be required to review and approve all applications to ensure that the applicant is not intending to transact business which the applicant is not authorized to transact.

#### Application and Agreement

In order to implement the change in the policy, the Exchange is also seeking approval of a proposed form of application and agreement that members will be required to submit to be approved to use the telephones at the equity option posts pursuant to the revised policy. This application and agreement is nearly identical to the application and agreement used for OEX post telephones which was approved by the Commission, except to the extent that the agreement sets forth terms of the equity telephone policy that are different from the terms of the OEX telephone policy. The Exchange has determined to file the application and agreement for approval because it contains some provisions that have not otherwise been approved specifically for use of telephones at the equity option posts. Among the provisions in the application and agreement are paragraph G and H which deal with liability issues. Paragraph G states that the Exchange shall not be liable to members of their customers for losses resulting from the installation, operation, relocation, use of, or inability to use telephones or telephone lines at an equity option post. Paragraph H requires the member to indemnify the Exchange against any liabilities arising out of equity post telephones or lines.

The application and agreement will require an applicant to receive approval of the Department of Compliance as well as the Equity Floor Procedure Committee, as indicated on the form,

before the Telecommunications Department may authorize a line or telephone to be installed. Before approving a telephone request, the Department of Compliance will review the application and contact the applicant if any questions are raised about the intended use of the telephone line.

Upon approval of the proposed rule changes, the Exchange will issue a regulatory circular substantially the same as Exhibit A to the submitted filing. The Exchange will implement these changes within sixty days of the approval of the changes.

The proposed rules are consistent with and further the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

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

CBOE does not believe that the proposed rule change will impose any 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 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 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 CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 98-1855 Filed 1-26-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39557; File No. SR-CHX-97-33]

### Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change Regarding Regulatory Cooperation

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 self-regulatory organization. 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 proposes to amend Article VIII, Rule 11 of its Rules to clarify the existing Rule and to require regulatory cooperation by members, member organizations, and others over

whom the Exchange has jurisdiction in connection with certain investigations and proceedings that are initiated by other exchanges or self-regulatory organizations.

#### 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

Currently, Article VIII, Rule 11 requires members (and certain others) to submit books and papers, furnish information, and appear and provide testimony to the Exchange's Board and other committees or officers of the Exchange, among other things. While the Exchange believes that the current rule provides adequate authority to require members (and others specified in the rule) to provide information to other regulatory organizations, the Exchange believes that clarifying this provision to expressly provide for such information is desirable, especially because other self-regulatory organizations have recently amended their rules to clarify their information-sharing authority.

The proposed rule change would expressly provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding, or refuse to furnish documentary materials or other information, or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange with other exchanges or self-regulatory organizations with whom the

Exchange has entered into agreements for the sharing of information and other forms of mutual assistance, including but not limited to members and affiliate members of the Intermarket Surveillance Group.<sup>1</sup> The proposed rule change would explicitly provide that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes. The requirements of the proposed rule would apply regardless of whether the Exchange had itself initiated a formal investigation or disciplinary proceeding.

The proposed rule change would also provide that any person or entity required to furnish information or testimony pursuant to the new rule must be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

While the Exchange believes that the current rule provides adequate authority to require members and specified others to provide testimony, documentary materials or other information to the Exchange's Board or to the Exchange (or any committee, subcommittee or officer thereof) and refrain from impeding or delaying any examination, inquiry, or investigation (whether formal or informal) the Exchange believes that changes are desirable to conform this text to the new provisions added above. Specifically, the proposed rule change would provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall impede or delay an Exchange examination, inquiry or investigation (whether formal or informal) with respect to possible violations within the disciplinary jurisdiction of the Exchange or with respect to possible limitations on access to Exchange services or otherwise with respect to the discharge of its duties nor refuse to furnish testimony, documentary materials or other information requested by the Board of Governors or by the Exchange (or by any committee, subcommittee, or officer thereof) during

<sup>1</sup> The Intermarket Surveillance Group ("ISG") is an organization of securities industry self-regulatory organizations formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. In order to promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

<sup>5</sup> 17 CFR 200.30-3(a)(12).