Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Asset Allocation Funds, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This funding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Funds.

5. Each Asset Allocation Fund's investments in Other Portfolios will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3957 Filed 2–17–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41033; File No. SR–CBOE–98–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 To Proposed Rule Change By the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System

February 9, 1999.

I. Introduction

On November 4, 1998, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a new Rapid Opening System (''ROS''). On December 9, 1998, the CBOE filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 17, 1998.[4] The Commission received no comments regarding the proposal. On January 15, 1999, the CBOE filed Amendment No. 3 to the proposed rule change.[5] On February 9, 1999, the CBOE filed Amendment No. 4 to the proposed rule change.[6] This order approves the proposed ROS pilot until March 31, 2000, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment Nos. 3 and 4 to the proposed rule change and is simultaneously approving Amendment Nos. 3 and 4 on an accelerated basis.

II. Background

Some variation exists as to how different trading crowds on the CBOE handle opening rotations today, but generally a crowd conducts a reverse rotation under which it opens further out series first and nearer term series later.[7] Once a trading crowd sets the quotes for a particular series, the series will automatically lock in the Exchange's Electronic Book if there are market orders, or limit orders between the bid/ask. In an Order Book Official (''OBO'') crowd,[8] floor brokers and OBOs then announced their respective positions to the crowd for final price discovery. That particular series remains locked until the opening price is manually entered by the book staff. Open trading for the series, however, does not commence until all series in the class have undergone these same opening price discovery procedures. Depending on the volatility in the marketplace and the number of orders received, an opening rotation may take anywhere from a few minutes to a half hour to complete. During the rotation, new orders queue up and cannot be addressed until open trading begins. In light of such delays, the Exchange now proposes to conduct its opening electronically through ROS. The Exchange believes that ROS should allow the Exchange to transition into open trading much faster than under the current system and that the backlog of orders that sometimes develops during the opening should rarely, if every, occur.

III. Description of the Proposal

The CBOE proposes to adopt new CBOE Rule 6.2A, *Rapid Opening System*, and a related rule change to CBOE Rule 6.2 to govern the operation of, and the eligibility to participate in, the Exchange's new ROS. ROS would allow the Exchange to automate the opening of various option classes, thereby avoiding the lengthier opening rotations that can occur under the present circumstances when there is a large influx of orders entered before or during the opening rotation. As the opening occurs, fill reports on all participating orders would be generated automatically and immediately, opening market quotes and last sales would be disseminated, and market-makers would receive notification of assigned trades.

Because the new system allows quicker entry into open trading, the Exchange believes that ROS would serve all market participants. Currently, orders entered after the opening rotation begins are locked out. Such orders become subject to market risk as the quotes may change from the time the series is opened to the time the rotation is completed. The CBOE believes that ROS should enable the Exchange's market-makers to open option classes within seconds of the underlying security's opening.

Availability of ROS

The Exchange intends to introduce ROS to a few classes to test the proposed new system. The Exchange expects that soon after its introduction ROS will be implemented throughout the floor, wherever it may be accommodated. Pursuant to its authority under CBOE Rule 6.2, the appropriate Floor Procedure Committee (''FPC''), chairman, or designee may decide where ROS should be used. Once implemented, the Exchange expects ROS will be used routinely and daily for

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange replaced its original proposal. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated December 8, 1998 (''Amendment No. 1''). In Amendment No. 2, the Exchange corrected technical errors in the proposal. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated December 8, 1998 (''Amendment No. 2'').

[4] Securities Exchange Act Release No. 40780 (December 10, 1998), 63 FR 69696.

[5] In Amendment No. 3, the Exchange clarified the operation of the new electronic system. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated January 13, 1999 (''Amendment No. 3'').

[6] In Amendment No. 4, the Exchange further clarified the conduct of openings and priority under the new system and its intention to implement the system on a pilot basis. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 9, 1999 (''Amendment No. 4'').

[7] *See* Amendment No. 3.

[8] The CBOE also uses Designated Primary Market Maker (''DPM'') crowds, where DPMs conduct some of the functions otherwise performed by an OBO.

those option classes where it is employed.[9]

ROS could be used to open a class of options at the beginning of the day and under certain circumstances (*e.g.*, following a trading halt) to re-open a class of options during the trading day. The appropriate FPC for each option class traded on the floor would determine the availability of ROS. Because the initial version of ROS employs the Exchange's AutoQuote system (''AutoQuote''), only those open classes that employ AutoQuote may use ROS initially. While most option classes on the floor use AutoQuote, some index options (including DJX, NDX, and OEX [10]) and classes traded at certain DPM trading stations do not currently employ AutoQuote. To allow the use of ROS, DPMs, that do not use AutoQuote may decide to do so (or may be required to do so by the appropriate FPC), at least at the opening. Later versions of ROS may accommodate inputs from systems other than AutoQuote.

Operation of ROS

To determine a single opening price, CBOE market-makers will provide AutoQuotes for all series to ROS. Generally, one participating market-maker will determine the variables that will determine the AutoQuote values. However, any participating market-maker will have the opportunity to improve individual quotes before the AutoQuote values are sent to ROS. ROS will not open a class until it has received AutoQuotes for all eligible series. The market-makers participating in ROS for a particular option class will determine collectively when they will send the AutoQuote values to ROS. In making this determination, the participating market-makers will have access to information that indicates the total contracts that would be traded on the opening. The information will be available on a screen at each trading station that employs ROS. Each screen will provide the following information: the number of market-makers logged onto ROS for the class, the total delta of all the orders in a particular class of options, the total contracts to trade, the last sale price of the underlying, and AutoQuote calculation values for the underlying. Individuals at the trading station also can access a detail screen that provides information on the number of long and short contracts to trade on a series basis, series AutoQuote values, contracts to trade on a series basis, total delta on a series basis, and thresholds for the class.

Before the start of the trading day, participating market-makers, who together share the obligation to trade at the opening price, will have established threshold for the aggregate risk and aggregate number of contracts to trade that they as a group are willing to assume for a particular class. If the actual aggregate risk and number of contracts to trade at the opening are both below these established thresholds, ROS will automatically open that particular class without any further intervention by the market-makers once AutoQuote has received input of the underlying stock value. In these cases, the opening quotes and last sales will be disseminated immediately. In those cases where either the aggregate risk or the aggregate contracts to trade exceed the established thresholds, a participating market-maker may manually adjust the AutoQuote values as is done under the opening rotations currently.

To adjust the AutoQuote values, a participating market-maker must touch a button to ''lock'' the particular class. The ''lock'' feature allows market-makers to adjust the AutoQuote values to account for the risk in the positions and contracts to trade, while incoming orders queue (just as orders queue during opening rotations today). Orders entered during the ''lock'' will not be eligible to participate in the opening. The Exchange expects that the lock feature generally only will be used for very brief periods.[11] Once the market-makers have adjusted AutoQuote, they will send the values to Ross and the class will open.

Regardless of whether market-makers adjust the AutoQuote values, the single opening price that ROS calculates for each series will be determined based upon the bid/ask values sent from AutoQuote (as they may be adjusted by the market-makers) and the orders contained in the book. The opening price will be set according to an algorithm, or a set of rules coded into the system, fed by the relevant AutoQuote and order information.[12] The CBOE represents that the algorithm was designed to maximize the number of customer orders able to be traded at or between the bid-ask values.

Once ROS determines an opening price, all customer orders that should be crossed at that opening price will be crossed. Any balance of orders will be assigned to participating market-makers if the opening price is at either the AutoQuote bid or offer.[13] Any orders that are not executed as part of the opening will remain in the Exchange's Electronic Book and will be reflected in the opening Bid or offer. Non-bookable orders (discussed below) that were presented to the OBO or DPM prior to the opening in accordance with proposed CBOE Rule 6.2A(a)(ii) will be filled by the market-makers in the crowd at the opening price if the order is ''deserving'' of such price.[14] As ROS completes the opening for each class, public customers will receive an

[9] Under the proposal, two Floor Officials may permit an OBO or DPM to use ROS on a class-by-class basis pursuant to Interpretation .01(b) of CBOE Rule 6.2.

[10] These are the Dow Jones Industrial Average, Nasdaq-100, and Standard & Poor's 100 index options.

[11] Under ROS, the Exchange expects classes to be locked for no more than thirty seconds. *See* Amendment No. 3.

[12] The algorithm rules, which ROS proceeds through in the following order, are:

(1) If there are more contracts to trade at the bid price than at any other price point, then the opening price will be set at the bid price. If the bid equals 0, then the ''zero bid rule'' will be used. This rule states that if there is a net to sell at 0, any buy volume will be crossed at 1⁄16 with the available sell volume. If there is a balance remaining to sell, the sell volume will be booked at 1⁄16. If there is no buy volume, then, as with the current EBook functionality, there are 0 to sell at 1⁄16 and the orders will be booked at 1⁄16.

(2) If there are more contracts to trade at the offering price than at any other price point, then the opening price will be set at the offering price.

(3) If neither (1) or (2) is satisfied, then ROS will look for other price points at which the maximum number of contracts are priced to be traded.

(4) There may be no contracts to trade at any of the price points.

(5) If there is only one price point at which the maximum number of contracts may be traded, then ROS will open at that price point.

(6) If there are multiple price points at which the maximum number of contracts may be traded then ROS will follow rules 7 through 10.

(7) If there is only one price point at which the net between the number of contracts to buy and sell is 0 and at which the maximum number of contracts can be traded, then ROS will open at that price point.

(8) If there are multiple points where the net between buys and sells is 0 and at which the maximum number of contracts can be traded, then ROS will calculate what the best quote will be coming out of rotation, and open at the net zero point closest to the midpoint of the best quote.

(9) If there is not a single net zero point closest to the midpoint of the best quote, then ROS will use the ''net change rule'' (discussed below) to determine the opening price.

(10) If there are no points where the net between buys and sells is zero and at which the maximum number of contracts can be traded, then ROS will open at a price at which the maximum number of contracts can be traded and where the net between buys and sells is greater than zero but less than or equal to the total number of contracts to buy or sell at that price. Use the net change rule if necessary.

Net change rule: If the direction of the last price change of the security underlying the option class is positive and the option is a call, then ROS will open at the higher price. If the option is a put, ROS will open at the lower price. For a negative change for the underlying, if it is a call option ROS will open at the lower price. If it is a put option, ROS will open at the higher price.

[13] If the opening price is between the AutoQuote bid or offer, then no trades will be assigned to participating market-makers.

[14] *See* note 17 *infra.*

electronic fill report for each order traded. Quotes and list sales will be disseminated to the Options Price Reporting Authority. Market-makers will be informed of their participation via an electronic trade notification or a paper notice, and trade match records will be created for clearance.

Obligations and Eligibility of Market-Makers

Each morning market-maker planning to participate on ROS must log on to ROS and identify the classes of options in which they will participate. If ROS is being employed in a DPM trading crowd, the DPM will be expected to participate on ROS. Any DPM designee (all of whom are permitted to act as both market-maker and floor brokers) would be entitled to log on to ROS and share equally in any trading imbalance at the opening price. To participate in the opening, the market-maker must log on prior to the opening or by some other earlier time designated by the appropriate FPC. (Similarly, in a delayed opening or a re-opening during the day, the participating market-maker must be logged on prior to the operation of ROS or by some earlier time.) Any market-maker that will be present at a particular trading station for the opening may log on to ROS for a class traded at that station,[15] but once a market-maker has logged on to ROS for that class during an expiration month, that market-maker must log on to ROS any time he is going to be present in the crowd at the opening during the remainder of the expiration cycle. This requirement is intended to ensure that those market-maker who participate in ROS will be obligated to participate on more volatile or busy days.

Two other provisions are intended to help ensure the viability of the system in various market situations. First, the appropriate Market Performance Committee (''MPC'') may require a market-maker to log on to ROS for specified classes traded at a particular trading station. Second, notwithstanding the limitations in proposed CBOE Rule 6.2A requiring the market-maker to be present in the crowd for the opening and to log on to ROS by a designated time, if insufficient market-maker participation exists for a particular class, two Floor Officials of the appropriate MPC will have the authority to long on to ROS those market-makes who are members of the trading crowd, as defined in CBOE Rule 8.50. Those Floor Officials also may allow market-makers in other classes of options to log on to ROS in such classes.

Participation on ROS will be monitored by the OBOs or DPMs at the particular trading station. The ROS screen in each trading crowd will indicate the number of market-makers that have signed on to ROS. If for any reason the OBO, the DPM, or the participating market-makers believe that the participation rate is inadequate, then the OBO or DPM may call Floor Officials either to have them log on other market-makers or conduct an opening rotation under the manual procedures currently employed.

Participation Rate for ROS

ROS will assign the contracts to trade for a particular class equally among all participating market-makers for that class to the extent possible. For example, if, after all customer orders have been crossed, there remain twenty-one contracts for the market-makers who are logged on the ROS to trade and there are four market-makers logged on to ROS for that class, then one market-maker would be assigned six contracts and the other three market-makers would be assigned five contracts.

Order Participating on ROS and in the Opening

When ROS is employed, all pre-open orders that are routed to the Exchange's Electronic Book will participate automatically in the opening process. All customer orders (both market and limit orders) without contingencies are eligible to be placed on the Electronic Book prior to the opening.

Orders that cannot be placed on the Electronic Book (non-bookable orders), including broker-dealer and customer contingency orders, will be accommodated manually in the opening. To entitle a on-bookable order to participate, the broker representing the order must inform the OBO or DPM and the market-makers that are logged on to ROS of the terms of the order (including limit price and volume) prior to the time the market-makers for a particular class lock that class under ROS. This notification deadline is the same time at which orders entered on the book will no longer be accepted in ROS which should help to ensure that different categories of orders are treated consistently.[16] This notification deadline will enable the quantity of orders and imbalance they represent to be taken into account in establishing the opening price.[17] Although these orders will not be represented in the ROS algorithm, the market-makers will be able to consider the effect of those orders when they decide whether to adjust their AutoQuote values.

Once ROS determines the opening price, the participating market-makers will trade at the opening price electronically with the imbalance of the booked orders and via open outcry with non-bookable orders that are ''deserving'' a fill[18] at the same opening price.[19] The Exchange anticipates that a

[15] Because the openings generally will occur simultaneously, typically it will be possible to participate on ROS only in those classes traded at one particular trading station on any given day. A market-maker is not permitted to log on to ROS for classes at two or more stations when those openings are expected to occur at approximately the same time.

[16] *See* Amendment No. 4.

[17] In Amendment Nos. 3 and 4, the exchange further explained the incorporation and execution of non-bookable orders at the opening. Market-makers will have the opportunity to adjust their AutoQuote to account for such orders, assisting efforts to price contracts fairly. *See* Amendment Nos. 3 and 4. Under certain circumstances, market-makers must adjust AutoQuote values to account for one of more non-booked limit orders. Market-makers will be required to make such adjustments if (i) the limit price of such non-booked orders is better than the AutoQuote bid or offer (as appropriate) and (ii) the imbalance of the non-booked orders that would be traded at such better limit price is equal to or greater than the imbalance or orders for that series in the book on the opposite side of the market. *See* Amendment No. 4.

[18] A non-bookable order will be filled for its entire size by market-makers in the crowd (assuming any contingency accompanying the order is satisfied) if that order is a (1) market order; (2) limit order and the limit price betters the opening price; or (3) customer limit order with a contingency where the limit price equals the opening price. If the order is a broker-dealer order and the limit price equals the opening price, the order will be entitled to be filled up to the lesser of the entire size of such order or an amount equal to a pro rata share of the orders assigned to the market-makers by ROS. If a broker holds more than one order to trade at the same limit price, that broker is nonetheless limited to no more than one pro rata share of the orders assigned to the market-makers by ROS. *See* Amendment No. 4.

Because the operation of ROS makes the application of traditional time priority rules difficult, the Exchange proposes to amend its priority rule, CBOE Rule 6.45, to reflect the above-stated method of filling non-bookable orders. The Exchange explains that under ROS, brokers are required to present their orders to the trading crowd before the market-makers finish adjusting the AutoQuote bid and offer. Notwithstanding the fact that the broker-dealer's order will always be entered prior to the market-makers's bid and offer, the Exchange believes that the market-makers must be able to participate at the opening price even if the opening price equals the limit price of a broker-dealer order because the market-makers are the group that ensures liquidity on the opening. *See* Amendment No. 4.

[19] The CBOE provided three scenarios to help illustrate the interaction of the various rules related to the manual handling of broker-dealer proprietary orders. For each of these scenarios, a broker-dealer presents an order to the crowd when the AutoQuote bid/offer is at 6–6½ and 4 market-makers are logged on to ROS for the relevant options class.

Scenario 1: There is no customer order to buy 50 contracts at the market in the Electronic book; there also is a broker-dealer order to sell 30 at a limit price of 6⅛. In this case, the market-makers in the crowd would not be expected to adjust their AutoQuote bid to reflect the broker-dealer bid because the demand to sell at a better price (30) is future release of ROS will incorporate non-bookable orders electronically. The Exchange notes that there are few broker-dealer orders entered prior to the opening today and the Exchange believes this is likely to be true when ROS is employed on the floor.

Survelliance of Market-Maker Procedures

The market-makers participating on ROS will be required to price the contracts fairly, in a manner consistent with their obligations under CBOE Rule 8.7(b)(iv). In conjunction with the implementation of ROS, the Exchange plans to publish the regulatory circular to remind market-makers of their obligation to set AutoQuote fairly.[20] The Exchange believes that a number of factors including scrutiny by customers and firms representing customer orders will ensure that market-makers adjust the AutoQuote values consistent with their obligation. In addition, if an OBO or DPM notices any unusual activity in the setting of AutoQuote values, the OBO or DPM must fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's AutoQuote has an audit trail log that details every key stroke employed in the use of AutoQuote. This audit trail report can be studied in the event of any concerns with the way the AutoQuote values were established for ROS.

Pilot Implementation

ROS would be implemented on a pilot basis through March 31, 2000.[21]

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[22] Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change represents an effort to facilitate the execution of orders at the opening by providing market-makers with a means of establishing electronically a single opening price. ROS replaces what has become an increasingly cumbersome process of arriving at the opening price by manually progressing through series after series of an options class. Significantly, until this process is completed for an options class, open trading generally does not commence in any of the class' series. This delay of open trading results in a backlog of orders that missed the opening and queue while awaiting open trading. ROS should alleviate such backlogs, thus improving market efficiency for all market participants. By facilitating an expedited opening of options classes on the CBOE, ROS should remove an impediment to and help perfect the mechanism of a free and open market consistent with the CBOE's responsibilities under Section 6 of the Act. Moreover, by integrating features into ROS, such as the crossing of customer orders, and by permitting the participation of non market-maker broker-dealer orders in the opening process, the Commission believes that the proposal should promote fair participation in ROS by all market participants.

The Commission recognizes that certain aspects of ROS may require heightened scrutiny by the CBOE to ensure that market-makers are not permitted to use the flexibility they have to set an opening price to the disadvantage of investors and other market participants. In particular, ROS provides market-makers discretion to set certain thresholds and the AutoQuote value that drives the ROS algorithm. The Exchange has assured the Commission that it will ensure that market-makers exercise their discretion in a manner consistent with their obligation to price options fairly. The Commission expects that the CBOE will develop objective, quantifiable standards for ensuring that the market-makers are satisfying those obligations and to surveil for such compliance. The pilot offers an opportunity for the Commission to evaluate the Exchange's efforts at surveilling market-maker activities associated with ROS. Prior to permanent approval, the Commission expects to review the results of the applied surveillance program.

Although ROS is likely to greatly improve the opening on the CBOE, the Commission believes that the system can and should be improved to permit participation by orders that cannot presently be included on CBOE's Electronic Book. The Commission does not view the manual handling of non-bookable orders as the optimal solution for ensuring that those orders are fairly incorporated into the opening. Although market-makers may now adjust their AutoQuote manually to reflect non-bookable orders, it would be preferable for such orders to be electronically incorporated into a ROS opening to fully interact with customer orders on the Electronic Book.

Moreover, the proposed handling of non-bookable orders may result in such orders receiving an inferior level of priority than they would enjoy today. Although ROS and the proposed manual handling procedures require a sequence of events surrounding the opening that make traditional, strict time priority rules difficult to apply, the Exchange has proposed manual handling procedures that should minimize the proposal's impact on exactly which orders receive fills. For example, the Exchange clarified the participation rights of broker-dealer proprietary limit orders equal to the ROS opening price.[23] The Commission, however, expects that during the pilot period the Exchange will ensure that, in practice, non-bookable orders continue to receive fair treatment substantially comparable to that received today. Prior to permanent approval, the Commission expects the Exchange to develop a workable plan for electronic incorporation of non-bookable orders on ROS. Because such orders represent a small percentage of orders executed on the Exchange,[24] however, and because of the great potential benefits ROS has for the opening, the Commission believes that in the interim it is prudent to allow ROS to be implemented on a pilot basis to alleviate problems associated with delays in the transition to open trading.

less than the supply to buy (50). The market-makers would sell 50 to the customer in ROS and manually buy 30 from the broker-dealer in the crowd at 6.

Scenario 2: There is one customer order to sell 50 contracts at the market in the Electronic book; there also is a broker-order to buy 50 at a limit price of 6⅛. In this case, the market-makers must adjust their AutoQuote bid to reflect the broker-dealer bid because the supply to buy at a better price satisfies all sellers. However, the market makers may also adjust the AutoQuote to 6⅛ for other reasons, such as a change in volatility. In either case, the market-makers would buy 50 from the customer in ROS at 6⅛. The market-makers would be required to sell 10 contracts (a pro rata share) to the broker-dealer at 6⅛. It is possible that the market-makers would fill the entire broker-dealer order at 6⅛.

Scenario 3; There is one customer order to sell 50 contracts at the market in the Electronic book; there also is a broker-dealer order to buy 50 at a limit price of 6. In this case, if the AutoQuote values do not change, the market-makers in the crowd would buy 50 from the customer in ROS at 6. The market-makers would be required to sell up to 10 contracts (a pro rata share) to the broker-dealer at 6. *See* Amendment No. 4.

[20] *See* Amendment No. 3.

[21] *See* Amendment No. 4.

[22] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact in efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See* Amendment No. 4.

[24] *See* Amendment No. 3.

The Commission finds good cause for approving proposed Amendment Nos. 3 and 4 prior to the thirteenth day after the date of publication of notice of filing of those amendments in the **Federal Register.** The amendments clarify the original proposal and the system's proposed operation, and propose implementing ROS on a pilot basis.[25] By implementing ROS on a pilot basis, the Exchange can immediately address difficulties associated with lengthy opening rotations and study ROS under market conditions while giving the Commission an opportunity to view the operation of ROS under market conditions before approving it permanently.

The Commission expects the CBOE to study issues related to the SEC's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of ROS. Among issues that the Exchange should explore are: how and when market-makers set ROS risk and size thresholds; how often such thresholds are exceeded and result in the adjustment of AutoQuote; the effect of AutoQuote adjustments on the quality of customer executions; any effects on existing order execution priority; and the handling of and adjustments made for non-bookable orders.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, including whether the proposed amendments are consistent with the Act. 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–98–48 and should be submitted by March 11, 1999.

[25] *See* Amendment Nos. 3 and 4.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–98–48), as amended, is approved through March 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3958 Filed 2–17–99; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice # 2972]

Overseas Presence Advisory Panel; Notice of Establishment

The Department of State's Overseas Presence Advisory Panel is established for FY 1999. The Panel is determined by the Secretary of State to be in the public interest in connection with the performance of duties imposed on the Department by law. The Panel shall terminate on September 30, 1999, unless it is renewed or extended by appropriate action prior to that date.

The Advisory Panel will advise the Secretary of State with respect to the Department of State's responsibilities for ensuring appropriate U.S. Government representation in foreign countries commensurate with the effective conduct of foreign relations. The Panel is charged with preparing a report recommending the criteria by which the Department, working with Chiefs of Mission, might determine the location, size, and composition of overseas posts in the coming decade. The Panel is tasked with considering the level and type of representation required overseas in order effectively to conduct America's business in the face of new foreign policy priorities, a heightened security situation, and extremely limited resources. The Panel shall be comprised of prominent persons from government and private life who shall have expertise in governmental or non-governmental dealings with foreign countries, their people, and their institutions.

Dated: February 12, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–3984 Filed 2–17–99; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Receipt of Notice To Withdraw Proposed Restriction on Operations of Stage 2 Aircraft at San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Withdrawal of Proposed Restriction on Stage 2 Operations.

SUMMARY: The Federal Aviation Administration (FAA) has been notified by San Francisco International Airport (SFO), that it has withdrawn its proposed restriction on the operation of Stage 2 aircraft operations. The proposed restriction was announced in the **Federal Register** on September 28, 1998. In that notice SFO proposed to amend its current Noise Abatement Regulation 4(C), which currently restricts operation of Stage 2 aircraft between 11:00 p.m. and 7:00 a.m., locally, and requires operators to agree to adhere to SFO's preferential runway use program in order to operate aircraft during these hours. The proposed restriction also expanded the current restriction on nighttime operation of Stage 2 aircraft by (1) extending the restricted hours to 7:00 p.m. to 7:00 a.m. local time, (2) requiring operators to agree to adhere to SFO's preferential runway use program in order to operate aircraft during those hours, and (3) eliminating the existing exemption from restriction of operations between the hour of 6:00 a.m. to 7:00 a.m. local time, for Stage 2 aircraft operators that agree to adhere to SFO's preferential runway use program.

EFFECTIVE DATES: The San Francisco International Airport has provided notice of the withdrawal of the proposed restriction effective December 16, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Jean Caramatti, Secretary to the San Francisco Airport Commission, San Francisco International Airport, International Terminal, Fifth Floor, P.O. Box 8097, San Francisco, California 94128, Telephone: 650/794–5000.

Issued in Hawthorne, California on February 3, 1999.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

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