SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43205; File No. SR–CBOE–00–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Interpreting Rules Relating to Customer Communications

August 24, 2000.

I. Introduction

On April 20, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, the CBOE seeks to clarify an interpretation of its customer communication rule. The proposed rule change was published for comment in the **Federal Register** on June 1, 2000.[3] The Commission received no comments on the proposal and this order approves it.

II. Description of the Proposal

Exchange Rule 9.21, ''Communications to Customers,'' governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* (''Guidelines'')[4] to explain the customer communications rules of the options exchanges and the interpretations of these rules. The Exchange proposes to issue a Regulatory Circular to formally install a clarifying interpretation that has long been applied by the Exchange. This interpretation deals with the requirement to discuss tax considerations when engaging in certain option strategies.

Although Rule 9.21 is silent regarding tax considerations in customer communications, the Guidelines and the Exchange's internal checklist (''Checklist''), which CBOE's Department of Financial and Sales Practice Compliance uses in reviewing communication materials, do require that tax considerations be discussed in communications in certain circumstances. The Guidelines state, ''depending upon the technical or specific nature of such communication, any one or more of the following points should be addressed.'' The Guidelines go on to list various points, including the following statement about taxes, ''[s]ince options transactions may involve complex tax considerations, it would be misleading to omit the mention of such strategies from any communication that discusses or recommends options strategies.'' In response to comments and recommendations made by the Commission's Office of Compliance Inspections and Examinations, the Exchange in February 1994 added language to its Checklist reflecting the Exchange's long-standing practice in reviewing communications for tax considerations. That practice was, and is, to require a discussion of tax considerations if the communication is educational material or sales literature that is strategy specific and complex.

The Exchange believes that more clarification could be provided to its members regarding this topic and has, therefore, decided to issue an interpretation in a Regulatory Circular clarifying which communications require a mention about tax considerations. The language in the interpretation mimics the language contained in the Exchange's Checklist. The proposed interpretation states that an advisory concerning taxes is required for educational material and sales literature involving specific, detailed and complex option strategies. In addition, the proposed interpretation states an advisory regarding taxes is not necessary where the communication is of a general, noncomplex nature or involves common basic options strategies (*e.g.*, purchasing, covered writing or cash secured put writing). According to the Exchange, an example of an appropriate advisory concerning taxes, where one is needed, would be, ''[b]ecause of the importance of tax considerations to many option transactions, the investor considering options should consult with his/her tax advisor as to how taxes affect the outcome of contemplated options transactions.''[5]

III. Discussion

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[6] In particular, the Commission finds the proposal is consistent with section 6(b)(5)[7] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) in that it will help member firms understand their obligations under CBOE's ''Communications to Customers'' rule and the Guidelines. As CBOE pointed out, the ''Communications to Customers'' rule does not specifically mention tax considerations. It does, however, prohibit misleading communications with the public. The Guidelines help clarify certain aspects of this rule, including whether a particular communication is misleading. Among other things, the Guidelines mention that it may be misleading to leave out discussions of tax considerations in a customer communication.

CBOE believes that a discussion of taxes is necessary when the customer communication involves specific, detailed and complex option strategies, but is not necessary when the customer communication is simple or involves basic options strategies. The Commission finds that the interpretation is consistent with the Act in that it helps member firms understand their obligations under CBOE's rules. In approving this rule, however, the Commission wants to emphasize that it does not believe that a firm would be acting inconsistently with the ''Communications to Customers'' rule and the Guidelines if the firm chose to include discussions of tax considerations in *all* of its customer communications.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–00–18) is approved.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42821 (May 24, 2000), 65 FR 35149.

[4] *See* Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File Nos. SR–Amex–90–38; SR–CBOE–90–27; SR–NASD–91–02; SR–NYSE–90–51; and SR–PSE–90–41).

[5] The Commission notes that the CBOE included two versions of this model advisory in its filing. The first version, which was included in the Purpose section of the filing, stated that, ''[b]ecause of the importance of tax considerations to all option transactions * * *.'' The second version, which was included in Exhibit A to the filing and is the sample Regulatory Circular, stated that, ''[b]ecause of the importance of tax considerations to many option transactions * * *.'' According to CBOE, the correct advisory is the second one. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Joseph Corcoran, Attorney, Division of Market Regulation, Commission, on August 24, 2000.

[6] In addition, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43214; File No. SR–NYSE–00–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Supplemental Procedures by the New York Stock Exchange, Inc. Relating to Arbitration Rules

August 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 purpose of the proposed Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607.

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.

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The purpose of the proposed Supplemental Procedures is to allow the parties to agree, on a pilot basis for two years from the date of filing, to select arbitrators under a procedure that is an alternative to NYSE Rules 601 and 607. The Supplemental Procedures are based on Rules approved by the Securities Industry Conference on Arbitration (''SICA'') that establish a list selection procedure for appointment of arbitrators. The Supplemental Procedures are voluntary and will not be used unless all parties agree to them. The Supplemental Procedures invite the parties to select their own arbitrators or agree on a procedure to select arbitrators. The Supplemental Procedures also suggest two ways the parties can select arbitrators instead of having the Exchange appoint them.

NYSE Appoints Arbitrators Under Rules 601 and 607. Under NYSE Rules 601 and 607, the Director of Arbitration appoints arbitrators to serve on each case. The Director generally delegates this task to a staff attorney. Each party has one peremptory challenge that allows the party to remove an arbitrator without specifying a reason. The parties have unlimited challenges for cause.

In 1998, the NASD amended its rules to require that all arbitrators be appointed using a rotational list selection system. Their rule differs somewhat from the SICA Uniform Code and the Exchange's proposed Supplemental Procedures.

Voluntary Supplemental Procedures for Selecting Arbitrators (a) Party Agreement on Arbitrator Selection. Under Exchange Rules, described above, the Director of Arbitration appoints the arbitrators, subject to the parties' challenges. The parties, however, may agree on an alternative way to select arbitrators. If all parties agree, they may select the arbitrators themselves or decide how they will be selected. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree. The Exchange also offers two alternative ways to appoint arbitrators. The following is a brief description of each method.

(b) Random List Selection. Under Random List Selection, the Exchange provides the parties with a list of names of arbitrators randomly generated by computer. Except as described below, the list will have fifteen names. Ten of the arbitrators will be public arbitrators as defined by NYSE Rule 607(a)(3) and five will be securities industry arbitrators as defined by NYSE Rule 607(a)(2), unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry. If, in the determination of the Exchange, the limited size of the arbitrator pool in a particular city makes a list of fifteen impractical, the lists may be limited to nine arbitrators; six public arbitrators and three securities industry arbitrators. Before the Exchange sends the lists of the parties, it will review the arbitrators' profiles for obvious conflicts or relationships with the parties or their counsel. The Exchange will replace those with conflicts by having the computer randomly select the name of a replacement arbitrator. The parties are also provided with the arbitrators' biographical and disclosure information as specified in NYSE Rules 608 (Notice of Selection of Arbitrators).

Within ten business days of receiving the lists, the parties may strike any or all of the names on the list. The parties are asked to number the remaining names in order of their preference (with ''1'' being the highest preference) and return the lists to the Exchange. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. The Exchange eliminates the names stricken and determines the ranking of the remaining names by adding the parties' rankings. The NYSE determines mutual preferences by adding the numbers assigned by each party to each arbitrator and selecting arbitrators with the lowest numbers first. The Exchange invites arbitrators to serve in order of the parties' combined preferences. In cases of a tie in the rankings, arbitrators will be invited to serve in alphabetical order.

If the Exchange cannot assemble a panel of arbitrators from the parties' lists, the Exchange will provide the parties with a second randomly generated list of names. The second list will have three names for each open seat on the panel. On the second list, each party has one non-renewable peremptory for each vacancy on the panel. Each party is to number the remaining names in order of its preference. If any arbitrator is removed from the list for cause before the expiration of the time within which to return the lists, the Exchange will provide a replacement name. If there remains more than one name per vacancy after the parties have exercised their strike, the Exchange will invite arbitrators to serve in order of the parties' combined preferences. In the