Dated: September 15, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–24195 Filed 9–15–00; 5:09 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 65 FR 56351.

**ACTION:** Federal Register Citation of Previous Announcement: 65 FR 56351.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** September 18, 2000.

**CHANGE IN THE MEETING:** Time Change.

The closed meeting scheduled for Thursday, September 21, 2000 at 11 a.m., has been changed to Friday, September 22, 2000, at 11 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 15, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–24196 Filed 9–15–00; 5:00 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43285; File No. SR–CBOE–00–01]**

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Prohibition on the Entry of Certain Electronically Generated Orders Into the Exchange's Order Routing System

September 12, 2000.

### I. Introduction

On February 9, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with 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 governing certain electronically generated orders. On March 6, 2000, April 28, 2000, and July 10, 2000, the CBOE filed Amendment Nos, 1, 2, and 3, respectively to the proposal.[3] Notice of the proposal was published in the **Federal Register** on August 4, 2000.[4] The Commission received one comment letter regarding the proposal.[5] This order approves the proposed rule change, as amended.

### II. Description of the Proposal

New Rule 6.8A (''Rule'') restricts the entry of certain options orders that are created and communicated electronically, without manual input, into the CBOE's Order Routing System (''ORS''). ORS is the Exchange's automated order trading and routing system comprised of the options order routing system, the Retail Automatic Execution System (''RAES''),[6] the electronic limit order book, and other electronic delivery and acceptance systems and terminals.

The Rule provides that members may not enter nor permit the entry of, orders into ORS if those orders are created and communicated electronically without manual input and if such orders are eligible for execution on RAES at the time that they are sent. To be permitted under the Rule, order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. Members are permitted to communicate to the Exchange orders manually entered by customers into front-end communication systems such as Internet gateway and online networks.

The Rule clarifies that an order is eligible for execution on RAES if: (1) its size is equal to or less than the maximum RAES order size for the particular option series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by RAES. As defined in the Rule, a marketable order is a market order or a limit order in which the specified price to sell is below or at the current bid, or the specified price to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate CBOE Floor Procedure Committee (''FPC'') has designated the class as an auto step-up class and if the National Best Bid or Offer (''NBBO'') for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of CBOE Rule 6.8.

The proposal is designed to permit CBOE market makers who participate in RAES to compete more effectively with customers who are equipped with electronic systems. Specifically, the Exchange represents that its business model depends upon market makers for competition and liquidity. If further represents that public customer orders submitted to the CBOE are provided with certain benefits pursuant to various rules of the Exchange, including Rule 6.8 (RAES Operations), Rule 6.45 (Priority of Bids and Offers), Rule 7.4 (Obligations for Orders), and Rule 8.51 (Trading Crowd Firm Disseminated Market Quotes). The Exchange represents that allowing electronically generated and communicated customer orders to be routed directly to ORS and RAES would give customers with such electronic systems a significant advantage over market makers. The Exchange believes that this could undercut its business model. The Exchange notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through ORS.

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No, 2, the Exchange proposed to create new Rule 6.8A, *Electronically Generated and Communicated Orders,* rather than including the proposed rule language as a subsection of CBOE Rule 6.8, *RAES Operations.* In Amendment No. 2, the Exchange proposed to prohibit electronically generated orders only if they were eligible for execution on the Exchange's Retail Automatic Execution System (''RAES''). In Amendment No. 3, the Exchange revised the proposed rule language to clarify that electronically created orders will be prohibited from entry into the Order Routing System (''ORS'') if they are eligible for execution on RAES at the time they are sent to the Exchange. Amendment No. 3 also clarified the types of orders that are considered to be eligible for execution on RAES at the time they are sent. *See* letters from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 3, 2000, April 27, 2000, and July 6, 2000. The modifications made by these amendments are incorporated in the description of the proposal in Section II below.

[4] Securities Exchange Act Release No. 43087 (July 28, 2000), 65 FR 48033.

[5] *See* Section III below for a description of the comment letter.

[6] RAES automatically executes customer market and marketable limit orders that fall within designated order size parameters. All designated primary market makers (''DPMs'') of a particular option class are required to log on RAES for that class; other market makers who trade that class on the floor may log on RAES but are not required to do so. When RAES receives an order, the system automatically attaches to the order its execution price, generally determined by the prevailing market quote at the time of the order's entry to the system, and a participating market maker will be designated as the counterparty on the trade. *See* CBOE Rule 6.8(a)(ii).

CBOE member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, a customer in some option classes may telephone an order directly to a floor broker in the trading crowd, provided the firm taking the order complies with all applicable rules for handling the customer order. In other trading crowd, a member firm representative or a customer may telephone an order into a member firm booth on the trading floor. From here the order may be taken manually into the proper trading crowd and represented; alternatively, it may be sent electronically from the booth to a floor broker in the trading crowd who will represent it. A member firm representative may also send an order to the floor of the Exchange pursuant to that firm's proprietary order routing network. The order would then be routed to the trading crowd in one of the two ways described above. Finally, a member firm may send an order to the Exchange through its interface with ORS. Eligible orders sent through ORS may be: (1) automatically executed against orders in the limit order book; (2) placed in the limit order book; (3) automatically executed via RAES; or (4) routed to a Public Access Routing (''PAR'') terminal in the trading crowd.

Prior to adoption of the new Rule, electronically generated orders could be sent to the CBOE in any of the ways described above. Electronically generated orders sent to ORS would be routed to RAES for automatic execution if those orders were otherwise eligible for execution on RAES. Under the new Rule, however, electronically generated orders that are eligible for execution on RAES at the time they are sent may *not* be routed to ORS. These orders, however, may be sent to the trading floor for execution as otherwise described above, *i.e.*, by telephone or through a member firm's proprietary order routing system.

## III. Summary of Comments

The Commission received one comment letter regarding the proposed rule change.[7] That letter, from Susquehanna Investment Group (''Susquehanna''), strongly supported approval of the proposal. Susquehanna stated that the Rule will enable CBOE market makers to compete more effectively by reducing their exposure to electronically generated orders. Susquehanna also stated that the Rule will promote a level playing field with the International Stock Exchange LLC (''ISE'') because of its similarly to Rule 717(f) of the ISE. Finally, Susquehanna asked the Commission to clarify that orders entered with a single keystroke are subject to the prohibition against entry into ORS. Susquehanna expressed concern that professional traders may attempt to circumvent the Rule by ''having a person enter a keystroke to send an electronically generated order * * * so that the order can be denied 'manual'.''[8] Susquehanna believes that such a practice could undermine the intent of the proposal.

## IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly Section 6(b)(5)[9] and Section 6(b)(8)[10] of the Act, and the rules and regulations thereunder.[11]

The Commission has carefully considered whether the Rule inhibits competition between the CBOE's automated customers and those who do not employ automated means of order entry. The Commission notes that in the equity markets, for example, limit orders from active customers have been a valuable source of quote competition. Nonetheless, the Commission recognizes that the CBOE's business model depends on market makers for competition and liquidity. Allowing electronic order entry into ORS could give automated customers a significant advantage over market makers. This could undercut the CBOE's business model. Moreover, the CBOE's prohibition against entry of electronically entered orders that are eligible for execution on RAES still allows non-marketable limit orders that improve the CBOE's displayed bid and offer to be entered into ORS.

The Commission believes that it is not inconsistent with the purposes of the Act for the CBOE to address the risk to its market makers posed by rapid entry of electronically generated orders that are designed to take advantage of temporary anomalies between current options prices and the value of the underlying stock or index. In this regard, the Commission notes that it has approved a similar rule for the first fully automated options exchanges, the ISE. In approving the application of the ISE for registration as a national securities exchange, the Commission explicitly recognized that the ISE's business model ''depends on market makers for competition and liquidity.''[12] Recognizing that allowing electronic order entry into the ISE could ''give automated customers a significant advantage over [the ISE's] market makers,'' the Commission stated that it was unable to conclude that the limitation violated the statutory requirements.[13]

ISE Rule 717(f) regarding computer-generated orders specifically permits the entry of computer-generated non-marketable limit orders that improve the best price available on the ISE. This provision is designed to accommodate non-marketable limit orders because these orders serve to increase competition and improve quotes. Similarly, non-marketable limit orders that improve the best price on the CBOE will not be subject to the Rule's prohibition against entry of computer-generated orders into ORS because that prohibition applies only to orders that are eligible for execution on RAES at the time they are sent. Under the Rule, an order is eligible for execution on RAES if (among other criteria) ''the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent.'' The Rule defines ''marketable order'' as a market order or a limit order in which the specified price to sell is below or at the current bid, or the specified price to buy is above or at the current offer. Non-marketable limit orders that improve the CBOE market, on the other hand, are orders priced *above* the correct bid and *below* the current offer. These non-marketable limit orders will not be excluded from ORS under the rule, but will instead be eligible for entry into ORS. Once entered into ORS, they will be routed to a member firm booth on the trading floor or to a PAR terminal in the trading crowd. Once the order arrives at the crowd, a market maker will execute the order or route it to the limit order book.

[7] Letter from Joel Greenberg, Managing Director, Susquehanna Investment Group, to Jonathan G. Katz, Secretary, Commission, dated August 29, 2000.

[8] *Id.* at 4.

[9] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[10] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

[12] Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000). In approving the ISE's application for exchange registration, the Commission also approved several ISE rules, including Rule 717(f) regarding entry of computer-generated orders.

[13] *Id.*

Although the ISE and CBOE rules are not identical, both ISE Rule 717(f) and CBOE Rule 6.8A permit non-marketable limit orders that improve the price to be sent to the exchange and routed to the relevant trading mechanism for execution. As it stated with respect to its approval of ISE Rule 717(f), the Commission is unable to conclude that the new CBOE Rule violates any statutory requirements.

In its comment letter, Susquehanna asked the Commission to clarify that orders entered with a single keystroke are subject to the Rule.[14] Susquehanna expressed concern that professional traders may attempt to circumvent the Rule by ''having a person enter a keystroke to send an electronically generated order . . . so that the order can be deemed ''manual'.'' [15] In response, the CBOE stated that it agrees with Susquehanna that this practice could potentially undermine the purpose of the Rule. In such a case, the CBOE believes that it can effectively address the issue by adding an Interpretation to Rule 6.8A that clarifies the scope of the Rule.[16] Such an Interpretation would be subject to the filing requirements of Section 19(b) of the Act.

In sum, the Commission notes that the Rule does not prohibit electronically generated orders from being sent to the CBOE; rather, it merely prevents them from being entered into ORS. Thus, electronically generated orders will be routed to the trading crowd and represented in open outcry. Once the order arrives at the trading crown, CBOE rules require that the order be executed at the CBOE's displayed bid or offer at the time the order is represented in the crowd.[17] Depending upon the circumstances, the order may be filled at a price better than the CBOE's displayed bid or offer. Therefore, although electrically generated orders will not be eligible for automatic execution on RAES under the Rule, they will still be entitled to receive an execution price that is as good as or better than the CBOE's displayed bid or offer.

## V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

[14] *Supra* note 7, at 4.

[15] *Id.*

[16] Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, Commission (September 10, 2000).

[17] *See* CBOE Rule 8.51.

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–00–01), as amended, adopting Rule 6.8A, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland**

*Deputy Secretary.*

[FR Doc. 00–24128 Filed 9–19–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34 43288; File No. SR NYSE 99 50]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Continued Listing Standards

September 13, 2000.

## I. Introduction

On December 21, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with 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 revise the Exchange's continued listing standards. On March 27, 2000, the Exchange submitted Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on April 7, 2000.[4] No comments were received on the proposal. This order approves the NYSE's proposal, as amended.

## II. Description of The Proposal

The proposal would modify several of the Exchange's existing continued listing criteria.[5] First, the Exchange proposes to define the term ''market capitalization'' in so far as it applies to the continued listing standards. Second, the Exchange proposes to clarify what is meant by ''shareholders equity'' in the context of partnerships. Third, the Exchange proposes to specify a set of circumstances in which it will exercise some discretion in determining the listing status of a company that has filed or has announced an intent to file for bankruptcy, and that is below the financial continued listing standards specified in Para. 802.01B of the *Listed Company Manual.*

### *(A) Market Capitalization Definition*

The proposal specifies that for purposes of its continued listing standards, the term ''market capitalization'' will encompass all common stock outstanding, whether publicly traded or not, so long as the Exchange is able to accurately attribute a value to it [6] on the day the market capitalization is calculated. Thus, if such a security is publicly traded common stock, the closing price from the previous trading day will be the price used for purposes of the calculation.

In addition, the proposal would permit the Exchange to provide its staff with the discretion to evaluate the capital structure of the issuer and include common stock that would be issued upon conversion of an instrument that constitutes the issuer's capital. Traditional debt, related to financing activities, will be excluded. Similar to the procedure discussed above, but for convertible publicly-traded securities other than common stock, the applicable price will be the closing price of the common stock into which it is convertible from the previous trading day.[7]

[18] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE made several clarifications to the intent and proposed interpretation of the proposed rule change. The Exchange expanded its discussion regarding the use of convertible securities in calculating the market capitalization of an issuer, and provided several examples of the proposed rule's application. The Exchange also explained the IRS-related basis for the proposed changes to the calculation of market capitalization for partnerships. Finally, the Exchange clarified that the proposed change to the bankruptcy provision would not restart the eighteen-month clock for an Exchange-approved plan. *See* Letter to Belinda Blaine, Associate Director, Division of Market Regulation (''Division''), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 21, 2000 (''Amendment No. 1''). In Amendment No. 2, the Exchange made several technical changes to the rule text which were reflected in the notice. *See* Letter to Belinda Blaine, Associate Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 24, 2000 (''Amendment No. 2'').

[4] Securities Exchange Act Release No. 42579 (March 27, 2000), 65 FR 18412.

[5] The Exchange recently revised its continued listing standards, and to this point several issues have come to light that necessitate clarification. *See* Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999).

[6] For example, a privately-held Class B common stock convertible into the listed Class A common stock would be included and valued on an as-converted basis.

[7] For example, if a convertible preferred security trades at $15 and the common stock into which it is convertible trades at $10, the price utilized would be the closing price of the common stock on the previous day (not the higher price of the preferred security) and the market capitalization would be computed on an as-converted basis.