

Purchase and Savings Plan; (3) the Cinergy Corp. Stock Option Plan; (4) the Cinergy Corp. Directors' Deferred Compensation Plan; (5) the Cinergy Corp. Long-Term Incentive Compensation Plan; (6) the Cinergy Corp. Union Employees' 401(k) Plan; (7) the Cinergy Corp. Union Employees' Savings Incentive Plan; and (8) the Cinergy Corp. Non-Union Employees' 401(k) Plan. Shares of Common Stock issued under the Plans from time to time over the Authorization Period may be authorized and previously unissued shares or previously issued shares reacquired by Cinergy in open market transactions. In addition, under the Stock Option Plan and the Long-Term Incentive Compensation Plan, plan participants may purchase shares of Common Stock under certain circumstances by, among other means, exchanging shares of Common Stock, and accordingly, Cinergy also requests authorization, to the extent required under the Act, to acquire shares of Common Stock from plan participants.

Cinergy proposes to apply proceeds of any shares sold for cash to general corporate purposes, including repayment of outstanding indebtedness and investments in subsidiaries. However, without further authorization from the Commission, Cinergy will not apply any proceeds to acquire exempt wholesale generators as defined in section 32 of the Act, or foreign utility companies as defined in section 33 of the Act.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43493; File No. SR-CBOE-00-04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change to Amend and Codify Equity Options Post Telephone Policy

October 30, 2000.

I. Introduction

On February 25, 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 to expand the existing CBOE policy governing the use of telephones at equity option trading posts to conform it to the CBOE's current index option trading post telephone policy by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts. On August 29, 2000, the Commission published the proposed rule change in the **Federal Register**.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In this proposed rule change, CBOE seeks to expand its existing policy governing the use of telephones at equity option trading posts⁴ to make it more consistent with the CBOE's current index option trading post telephone policy by allowing for the receipt of orders over outside telephone lines, from any source, directly at equity trading posts, and to incorporate that policy into the Exchange's rules. The proposed rule change is more limited than the current telephone policy for the index option post, however, in that it would generally allow for the receipt of orders directly at the post over outside telephone lines only when the order(s) are placed during *outgoing* telephone calls. The Exchange seeks to codify and amend its current equity option post telephone policy to make clear to member and member organizations the Exchange's position with respect to the use of telephones at equity option posts. The proposed policy would supercede previous policies concerning the use of telephones at equity option trading posts set forth in CBOE Regulatory Circulars.

Regarding the history of CBOE's equity option trading post telephone policy, the CBOE first proposed a telephone policy for equity option posts in 1993.⁵ That initial policy prohibited any orders from being transmitted over the outside telephone lines to the equity option posts, but allowed for orders to be transmitted via intra-floor lines from one point on the Exchange floor to another. In 1996, the Exchange modified

its telephone policy at equity posts to allow orders of CBOE market makers to be received over the outside telephone lines directly at the trading posts, which remains the current policy.⁶ The proposed rule change would expand this policy by permitting the receipt of off-floor orders from any source (*i.e.*, members, broker-dealers, non-broker-dealer, or public customers) over outside telephone lines directly at the equity trading posts during outgoing telephone calls, but would limit the orders to those transmitted to the equity posts pursuant to a telephone call initiated at the post (*i.e.*, an outgoing call).⁷ According to CBOE, the proposed rule change would make the CBOE's telephone policy for equity option posts more consistent with the current policy at the OEX post in place since 1998.⁸

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Sections 6(b)(5) and 6(b)(8) of the Act.⁹ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate

⁶ RG 97-92, the latest Regulatory Circular reflecting CBOE's current equity telephone policy, was approved by the Commission in Securities Exchange Act Release No. 37876, 61 FR 56728 (November 4, 1996), and modified in Securities Exchange Act Release No. 39331, 62 FR 62650 (November 24, 1997).

⁷ In adopting this change, the CBOE wants to provide more immediate access into its trading crowds to its customers. The Exchange believes that this expansion in access is necessary to allow the CBOE to continue to satisfy its customers in an increasingly competitive environment.

⁸ The OEX pit telephone policy is set forth in CBOE's Regulatory Circular, RG-98-09, which was approved in Securities Exchange Act Release No. 39435, 62 FR 66157 (December 17, 1997). CBOE's current proposal for the equity option post differs somewhat from its OEX policy contained in the above-noted Regulatory Circular. RG-98-09 allows floor brokers to take telephone orders using their dedicated telephone lines at the OEX pit, while the current proposal would allow all members to receive telephone orders (with the outgoing call limitation) over the equity option post general telephone lines, with members using PIN access codes to access the lines. CBOE represents that space limitations at the equity option post would prohibit the use of dedicated lines. Further, CBOE represents that, in contrast to the OEX post, order-taking at the equity option post is not limited to floor brokers, as Designated Primary Market Makers ("DPM") can also act as floor brokers pursuant to existing CBOE rules. Telephone call from Timothy Thompson, Director, Regulatory Affairs, CBOE and Angelo Evangelou, Attorney, CBOE to Geoffrey Pemble, Attorney, Division of Market Regulation, SEC (October 26, 2000).

⁹ 15 U.S.C. 78f(b)(5) and (b)(8).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43194 (August 22, 2000), 65 FR 52457 (August 29, 2000).

⁴ Equity trading posts are all trading posts that are under the jurisdiction of the Equity Floor Procedure Committee (all trading posts except DJX, NDX, OEX and SPX), including Designated Primary Market maker crowds.

⁵ See Securities Exchange Act Release No. 33701 (March 2, 1994), approving SR-CBOE-93-24.

transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁰ Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

Under the current policy, the only orders for equity options that may be received at the post directly via telephone lines from off-floor locations are off-floor orders of CBOE market makers. The proposed rule change would expand this policy by permitting the receipt of off-floor orders from any source (*i.e.*, members, broker-dealers, non-broker-dealers, or public customers) over outside telephone lines directly at the equity trading posts during outgoing telephone calls. The proposed rule change would only allow for such orders to be transmitted to the equity posts pursuant to a telephone call initiated at the post (an outgoing call), while permitting CBOE market makers to continue to transmit orders over the telephone lines from off the floor directly to the equity trading posts (via incoming calls).

The Commission finds that the proposed rule is consistent with, and furthers the objectives of, Section 6(b)(5)¹¹ of the Act in that it is designed to improve communication 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. Specifically, the Commission notes that the limits on telephone use proposed by the CBOE are consistent with the goals of the Act. In this regard, the Commission believes that it is reasonable for CBOE to codify its current policy permitting CBOE market makers to send orders to the trading floor via incoming calls (a benefit that is not enjoyed by other types of members and public customers). This policy allows CBOE market makers to transmit their orders more efficiently at those times when they are required to be off the floor. In the Commission's view, it is also reasonable for the Exchange to now allow orders from any other source

to go directly to the post as long as those orders are placed in outgoing calls only.

The Commission further believes that the proposed rule change modifies the Exchange's communication system in a way that provides for equitable access to the Exchange floor among members, broker-dealers, non-broker-dealers, and public customers (both institutional and retail) alike. Accordingly, the Commission finds that the proposal is consistent with the requirement of Section 6(b)(8)¹² of the Act, which requires that the proposed rule change not impose any burden on competition not necessary or appropriate in furtherance of the Act's purposes.

The Exchange has indicated that it intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts (including the requirement that any member or associated person receiving orders over outside telephone lines be properly qualified pursuant to CBOE rules to do so) through complaints from Exchange members at the post, as well as observations of Floor Officials and Exchange staff. The Exchange has further indicated that CBOE's Equity Floor Procedure Committee will be responsible for implementing this policy in conformity with Exchange Rules and provisions of the Act, including approving access and the phone technology, and will decide any other issues relating to this policy.¹³ Finally, the CBOE Department of Financial and Sales Practice Compliance will be required to review and approve all applications relating to the policy to ensure that the applicant is intending to transact business which the applicant is authorized to transact.

The Commission believes that proper surveillance is an essential component of any policy telephone access to an exchange's trading floor. Especially important in this case is ensuring that the CBOE's surveillance efforts prevent individuals who are not properly qualified to take public orders for securities (*i.e.* non-Series 7 qualified Exchange employees) from interacting with the public. The Commission finds that the safeguards proposed above by the CBOE are consistent with the prevention of fraudulent and

manipulative acts and practices, as required under Section 6(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-CBOE-00-04) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43499; File No. SR-CBOE-00-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. To Extend the Pilot Period Relating to the Processing of Live Ammo Orders Until December 15, 2000

October 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ Rule 19b-4² thereunder, notice is hereby given that on October 26, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 CBOE proposes to extend until December 15, 2000, the pilot program that allows an Order Book Official ("OBO") or a Designated Primary Market-Maker ("DPM") to designate certain booked orders to be electronically executed ("Live Ammo to RAES"). The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² 15 U.S.C. 78f(6)(8).

¹³ According to CBOE, responsibility for accepting orders from a wide range of customers will be borne by the member firms. Floor brokers accepting orders in this manner would be required to be qualified pursuant to Exchange Rule 91. As is the case with brokers accepting orders of public customers over OEX post telephones, any broker speaking directly with a public customer is required to be Series 7 qualified and registered with the Exchange by a member organization approved to conduct non-member customer business.

¹⁰ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).