

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.<sup>10</sup> 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)<sup>11</sup> 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)<sup>12</sup> 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.<sup>13</sup> 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,<sup>14</sup> that the proposed rule change (SR-CBOE-00-04) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>15</sup>

**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")<sup>1</sup> Rule 19b-4<sup>2</sup> 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.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78f(6)(8).

<sup>13</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

#### 1. Purpose

On February 2, 2000, the Commission approved, on a pilot basis, a system change that allows an OBO or a DPM to reroute orders on the electronic book screen that displays market orders and limit orders and improve the market ("Live Ammo") to the Retail Automatic Execution System ("RAES") if the orders are RAES-eligible.<sup>3</sup> The pilot is scheduled to expire on October 31, 2000.

The Exchange now proposes to extend the pilot until December 15, 2000. The Exchange is currently preparing a proposed rule change, which will propose to adopt the Live Ammo to RAES processing system on a permanent basis. Thus, the proposed extension of the pilot will allow the Live Ammo to RAES system to remain in place while the Commission considers the Exchange's proposal to permanently approve the system. The Exchange also believes that extending the pilot will continue to allow for the faster execution of customer orders and prevent a backlog of customer orders on the Live Ammo screen.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and would remove impediments to and perfect the

mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

### 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 not necessary or appropriate in furtherance of purposes of the Act.

### 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

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</sup> thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately in order to allow the Pilot to continue in effect on an uninterrupted basis. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through December 15, 2000. The extension of the Pilot will provide the Commission with the time necessary to review and evaluate the Exchange's proposal to permanently adopt the Live Ammo to RAES system.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Commission notes that unless the pilot is extended, the Pilot will expire on October 31, 2000, which the Commission believes could result in confusion regarding how orders on the Live Ammo screen should be handled. Therefore, the Commission believes that it is in the public interest to extend the Pilot.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through December 15, 2000.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. 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 CBOE. All submissions should refer to File no. SR-CBOE-00-50 and should be submitted by November 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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<sup>3</sup> Securities Exchange Act Release No. 42379, 65 FR 6665 (February 10, 2000). The Exchange rule pertaining to the processing of Live Ammo orders is Rule 7.4(g).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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