

The proposed rule change was published for comment in the **Federal Register** on October 5, 2000.<sup>4</sup> No comments were received. This order approves the proposed rule change.

## II. Description of the Proposal

The Exchange has had a policy of requiring a company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of a company in receipt of such notice.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of its pending delisting should disclose not only the fact of the company's having received a written notice from the Exchange, but also indicate on which of the Amex continued listing guidelines the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions about whether to make or maintain investments in the securities of such company.

The Exchange has proposed that a company make public its announcement regarding its pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company should fail to disclose the receipt of a written delisting notice under the Exchange's proposal, trading of its securities would be halted until the announcement has been made, even if the company elects to appeal the underlying delisting determination as provided for under Section 1010 of the Exchange's Listing Standards, Policies and Requirements.

The Exchange has also proposed that, where a company has elected to appeal the Exchange's delisting determination but fails to make the required

announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether or not to delist the company's securities may also be based on the company's failure to make the required public announcement.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder governing national securities exchanges.<sup>5</sup> In particular, the Commission finds that the proposal is consistent with the provisions of Section 6(b)(5) of the Act<sup>6</sup> which requires, among other things, that an exchange have rules that are, in general, designed to protect investors and the public interest. The Commission finds that it is appropriate for the Amex to codify in its rules its current policy requiring a listed company (or a company whose securities trade on the Exchange pursuant to unlisted trading privileges) to promptly disclose to the public that it has received a written delisting notice from the Exchange, and to set forth in its public disclosure the continued listing guidelines cited by the Exchange in making its delisting determination. The proposed rule change will better enable the Exchange to ensure that investors in the securities traded on the Exchange have as much information as possible about the issuers of such securities.

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Amex-00-43) is hereby approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43537; File No. SR-CBOE-00-43]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Participation Rights in Crossing Transactions

November 9, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 CBOE is proposing certain changes to provisions of its rule that governs the participation rights of firms crossing orders. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

\* \* \* \* \*

Chicago Board Options Exchange, Inc., Rules, Chapter VII, Section D: Floor Brokers, "Crossing" Orders, Rule 6.74

(a)-(c) No change.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity option order of the eligible order size or greater ("original order"), the Floor Broker is entitled to cross a certain percentage of the order with other [customer] orders [from the same firm from which the original order originated ("originating firm") that he is holding or in the case of a public customer order with a facilitation order of the originating firm (*i.e., the firm from which the original customer order originated*). The appropriate Floor Procedure Committee may determine, on a class by class basis the eligible size for an order that may be transacted pursuant to this paragraph (d), however, the eligible order size may not be less than 50 contracts. In accordance with his responsibilities for due diligence, a Floor Broker

<sup>5</sup> In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>4</sup> Securities Exchange Act Release No. 43371 (Sept. 27, 2000), 65 FR 59476.

representing an order of the eligible order size or greater which he wishes to cross shall request bids and offer for such option series and make all persons in the trading crowd, including the Order Book Official, aware of his request.

(i)-(vii) No change.

\* \* \* Interpretations and Policies:

No change.

\* \* \* \* \*

## 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 CBOE included statements concerning the purpose 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.

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

#### 1. Purpose

a. *Background.* The Commission recently approved a change to Exchange Rule 6.74 to provide a participation right that entitles member firms to cross a certain percentage of each order they send to the floor.<sup>3</sup>

Specifically, the rule change provided that after the Floor Broker representing an order ("original order") has requested and received a market from the trading crowd, if the trade takes place at that market, the Floor Broker is entitled to cross 20% of the contracts remaining in the original order with another order from the same firm from which the original order originated.<sup>4</sup> The participation right applies only after all public customer orders in the book and represented in the crowd at the time the market was established have been satisfied.

If the trade takes place at a price between the best bid and offer provided by the crowd then, after public customer orders are satisfied, the Floor Broker will be entitled to cross 40% of the contracts remaining in the original order.

<sup>3</sup> See Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR-CBOE-99-10).

<sup>4</sup> The rule applies equally to a case where the second order is provided by the firm from its own proprietary account, in which case the second order is referred to as a "facilitation order." See *id.*

b. *Proposed Changes.* The Exchange is proposing to make two changes to Rule 6.74(d). The first change would make clear that the rule includes the situation where a Floor Broker is seeking to cross a *solicited* order against the original customer order. The second change would allow the Floor Broker representing the original customer order to solicit the order to trade against it even if that Floor Broker is not a nominee of the originating firm.

(i) *Application of the rule to solicited orders.* The Exchange states that its recently approved rule governing participation rights in cross trades was clearly intended to allow the member firm to receive its participation right when seeking to cross either a solicited order or a facilitation order against the original customer order.

The Exchange states that this is indicted by the rule language itself, which refers to "other customer orders" that a Floor Broker may be seeking to cross against the original order, in addition to—and as distinct from—"facilitation orders."<sup>5</sup> The Exchange states that there would have been no reason to distinguish between these types of orders if the rule was intended to allow the member firm to receive its participation right only when facilitating a customer order. The Exchange additionally points out that paragraph (d)(vi) of the rule specifically indicates that a Floor Broker might be holding either a solicited or facilitation order.<sup>6</sup>

Finally, the CBOE notes that in letter that amended the original proposal of Rule 6.74(d), in response to questions from the Commission's staff about what type of entity might be solicited to trade against the original order pursuant to the rule, the Exchange stated that the "member firm may solicit a broker-dealer, a public customer, or any other source from which the firm expects to be able to find additional liquidity and a better price."<sup>7</sup>

<sup>5</sup> Paragraph (d) of Rule 6.74 states that "the Floor Broker is entitled to cross a certain percentage of the order with other customer orders from the same firm from which the original order originated ('originating firm') that he is holding or in the case of a public customer order with a facilitation order of the originating firm."

<sup>6</sup> Paragraph (d)(vi) states: "A Floor Broker who is holding a customer order and either a facilitation or solicited order and who makes a request for a market will be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order and the other order will also have priority over all other orders that were not being represented in the trading crowd at the time the market was established."

<sup>7</sup> Letter from Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, to Nancy Sanow, Division of Market Regulation

Nonetheless, the CBOE states, a few members of the Exchange have questioned whether the rule was in fact intended to allow the member firm to receive a participation right by trading a solicited order against the original customer order. These members have based their uncertainty on the text of Rule 6.74(d), which states that "the Floor Broker is entitled to cross a certain percentage of the order with other *customer* orders from the same firm from which the original order originated ('originating firm') that he is holding." (emphasis added)

These members believe that the term "customer" could be read to mean either a public customer (*i.e.*, a non-broker-dealer) or a client with which the firm has had a longstanding relationship. According to the Exchange, however, the aforementioned amendment letter demonstrates that the term "customer" was not intended to be read so restrictively. Consequently, the Exchange is now proposing to delete the term "customer" from this portion of the rule to make clear that the solicited order may come from any source.<sup>8</sup>

(ii) *The Floor Broker may solicit the order.* As currently written, the cross participation rule provides that the Floor Broker may cross the original customer order with other "orders from the same firm from which the original order originated (originating firm)." As such, if the Floor Broker who is representing the order is not a nominee of the originating firm but works for a firm that has been given the order to execute ("executing firm"), the Floor Broker or the executing firm would not be entitled to obtain the cross participation entitlement with respect to any order that the Floor Broker or executing firm had solicited.

After considering the implications of this restriction, the Exchange has determined to amend the rule so that the Floor Broker's participation entitlement is not limited to orders from the originating firm only. The proposed rule change would permit the Floor Broker who is not a nominee of the originating firm to himself solicit orders, with the aim of expanding the pool of potential liquidity providers who will be able to participate in the price

("Division"), the Commission, dated April 10, 2000 (Amendment No. 2 to File No. SR-CBOE-99-10) ("amendment letter").

<sup>8</sup> For instance, as clarified by the proposed rule change, the participation right would apply equally when the Floor Broker seeks to cross the original order with an order solicited from a market maker. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, and Ira L. Brandriss, Attorney, Division, the Commission, on September 21, 2000.

improvement process that the Exchange believes is encouraged by this rule.

To permit the Floor Broker who is not a nominee of the originating firm to solicit orders that will receive the benefit of the cross participation entitlement, the Exchange is proposing to delete the phrase that states that the order must be "from the same firm from which the original order originated ('originating firm')."'

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5)<sup>9</sup> of the Act in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

### *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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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 the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR-CBOE-00-43 and should be submitted by December 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43550; File No. SR-PCX-00-15]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Pacific Exchange, Inc. To Require Immediate Display of Options Limit Orders in the Option Limit Order Book**

November 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 14, 2000, the Pacific Exchange, Inc. ("PCX" 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 Exchange. The PCX filed Amendment Nos. 1<sup>3</sup> and 2<sup>4</sup> to the proposed rule change on August 1, 2000

<sup>10</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>3</sup> Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 31, 2000 ("Amendment No. 1"). Amendment No. 1 deletes the language of PCX Rule 6.55 and Commentary .01 thereunder, that sets forth special reporting requirements for highest bids and lowest offers comprised of more than 25 options contracts.

<sup>4</sup> Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated September 29, 2000 ("Amendment No. 2"). Amendment No. 2 revises Rule 6.55 to clarify that "immediately" means as soon as practicable after receipt, which under normal market conditions means no later than 30 seconds.

and October 17, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to amend PCX Rule 6.55 to require Order Book Officials to immediately display options limit orders in the Options Limit Order Book. As amended, the PCX proposal requires Order Book Officials to immediately display the highest bid and lowest offers, along with the corresponding number of options contracts bid or offered in the book for which that official acts as the Order Book Official. Additionally, the proposed rule change would delete the special requirements contained in PCX Rule 6.55 and Commentary .01 thereunder, that apply to highest bids and lowest offers of more than 25 options contracts.<sup>5</sup>

### **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 PCX 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 PCX 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

The purpose of the proposed rule change is to amend Exchange Rule 6.55 ("Displaying Bids and Offers in the Book") to require the immediate display of options limit orders by Order Book Officials. Currently, PCX Rule 6.55 requires an Order Book Official to continuously display, in a visible manner, the highest bid and lowest offer, along with the corresponding number of options contracts bid or offered, in his book in each option contract for which he is the Order Book Official.

The Exchange represents that limit orders are routed to an Order Book Official either manually or electronically. A manual order is sent to an Order Book Official by a floor

<sup>5</sup> See Amendment No. 1, *supra* note 3.

<sup>9</sup> 15 U.S.C. 78f(b)(5).