

and based on valid assumptions and methodology; and  
 —Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-2150, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415-3540.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Forms Analysis and Design, (202) 606-0623.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

[FR Doc. 00-33116 Filed 12-27-00; 8:45 am]

**BILLING CODE 6325-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Emergency Request for Review of an Information Collection: OPM Form 1644

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget an emergency request for review of an expiring information collection. OPM Form 1644, Child Care Provider Information: Child Care Tuition Assistance Program for Federal Employees, is used to verify that child care providers are licensed and/or regulated by local and/or State authorities. Agencies need to know that child care providers to whom they make disbursements in the form of tuition assistance subsidies are licensed and/or regulated by local and/or State authorities.

Pub. L. 106-58, passed by Congress on September 29, 1999, permits Federal agencies to use appropriated funds to help their lower income employees with

their costs for child care. It is up to the agencies to decide on whether to implement this law. This is a new law and the extent to which it will be implemented, including the number of providers that will be involved, cannot be easily predicted. We estimate approximately 5000 OPM 1644 forms will be completed annually.

The form will take approximately 10 minutes to complete by each provider. The annual estimated burden is 835 hours.

Comments are particularly invited on:  
 —Whether the form adequately captures the information needed to verify child care provider State and/or local licensure and regulation;  
 —Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and  
 —Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other information collection strategies.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before January 8, 2001.

**ADDRESSES:** Send or deliver comments to:

Patricia F. Kinney, Director, Office of Work/Life Programs, U.S. Office of Personnel Management, 1900 E St., NW, Washington, DC 20415

and  
 Joseph Lackey, Agency Desk Officer, Office of Management and Budget, 725 17th St., NW Room 10235, Washington, DC 20503

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Brooke L. Brewer, Work/Life Program Specialist, Office of Work/Life Programs, (202) 606-2012.

U.S. Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

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**BILLING CODE 6325-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**TIME AND DATE:** 11:00 a.m., January 2, 2001.

**PLACE:** OPM Executive Conference Room 5A06A, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415-0001

**STATUS:** This meeting will be open to the public at 11:00 am.

**MATTERS TO BE CONSIDERED:** This meeting is called by the Office of the Chair with less than 15 days public notice so the Committee can complete its current agenda. The meeting is open to the public.

**CONTACT PERSON FOR MORE INFORMATION:** Geri Coates, Recording Secretary, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5538, Washington, DC 20415-1600, (202) 606-1500.

**John F. Leyden,**

*Chairman, Federal Prevailing Rate, Advisory Committee.*

[FR Doc. 00-33117 Filed 12-27-00; 8:45 am]

**BILLING CODE 6325-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43756; File No. SR-CBOE-98-46]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1, 2, 3, 4, 5, 6, and 7 to the Proposed Rule Change Relating to the Evaluation of Trading Crowd Performance

December 20, 2000.

#### I. Introduction

On October 23, 1998, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 196-4 thereunder,<sup>2</sup> a proposed rule change to amend CBOE Rule 8.60, *Evaluation of Trading Crowd Performance*, to provide limited remedial actions for Designated Primary Market Makers (“DPMs”), market makers, and other members and trading crowds (collectively referred to as “Market Participants”) who have failed to satisfy their market responsibilities. The proposed rule change was published for comment in the *Federal Register* on December 10,

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

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

1998.<sup>3</sup> By letter dated March 12, 1999, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> On April 12, 1999, CBOE filed Amendment No. 2 to the proposal.<sup>5</sup> On June 17, 1999, CBOE filed Amendment No. 3 to the proposal.<sup>6</sup> On October 23, 2000, CBOE filed Amendment No. 4 to the proposal.<sup>7</sup> On

<sup>3</sup> Securities Exchange Act Release No. 40737 (December 2, 1998), 63 FR 68321.

<sup>4</sup> See letter from Debora E. Barnes, Senior Attorney, Legal Department, Office of Enforcement, CBOE, to Marc McKayle, Attorney, Division of Market Regulation ("Division"), Commission, dated March 12, 1999 ("Amendment No. 1"). In Amendment No. 1, CBOE responded to a comment letter. The substance of CBOE's response to the comment letter is discussed in greater detail below.

<sup>5</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Marc McKayle, Attorney, Division, Commission, dated April 8, 1999 ("Amendment No. 2"). In Amendment No. 2, CBOE clarified that there is no automatic stay of an action during the appeal of a remedial sanction, but that a Market Participant could request a stay of action during an appeal. CBOE also indicated that the primary difference between the sanctions that presently exist under the Rule and the limited remedial actions introduced by this proposal is the severity of the sanctions. The Exchange also clarified that pursuant to CBOE Rule 19.1, Interpretations and Policies .01, a Market Participant would be considered aggrieved in an economic sense if sanctioned under the proposed revisions to CBOE Rule 8.60, and thus entitled to appeal any action taken by a Market Performance Committee under the rule. The Exchange also noted that, pursuant to CBOE Rule 19.5, any decision of the Appeals Committee is subject to review by the Exchange's Board of Directors. The Exchange also explained that limited remedial actions taken under the proposal by the appropriate Market Performance Committee would not constitute a disciplinary action, and thus Exchange reporting requirements under Rule 19d-1(e) of the Act, 17 CFR 240.19d-1(e), would not be triggered. Finally, the Exchange assured the Commission that the three Market Performance Committees have exclusive, non-overlapping jurisdiction, and thus Market Participants would not face duplicative sanctions stemming from one course of conduct.

<sup>6</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Marc McKayle, Attorney, Division, Commission, dated June 16, 1999 ("Amendment No. 3"). In Amendment No. 3, CBOE amended the Rule to restrict a member's ability to participate in the Rapid Opening System ("ROS") as a limited remedial sanction. CBOE also deleted language from the rule text that would have given the appropriate Market Performance Committee discretion to "take any other limited remedial action." CBOE also indicated that any additional comparable limited remedial sanctions would be added to the rule by a proposed rule change filed with the Commission pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Elizabeth King, Associate Director, Division, Commission, dated October 17, 2000 ("Amendment No. 4"). In Amendment No. 4, CBOE reorganized the text of the rule language and consolidated all remedial actions and hearing procedures into paragraphs (c) and (d), respectively, of proposed CBOE Rule 8.60. In addition, CBOE added language to specify that the rule pertained to DPMS, market makers, and other members (individually or collectively as trading crowds) and not solely market makers. The CBOE also amended the rule to refer to the "market responsibilities" of market participants instead of "performance

November 13, 2000, the Commission received a faxed copy of CBOE's Amendment No. 5 to the proposal.<sup>8</sup> On December 4, 2000, CBOE filed Amendment No. 6 to the proposal.<sup>9</sup> On December 19, 2000, the CBOE filed Amendment No. 7 to the proposal.<sup>10</sup> The Commission received one comment regarding the proposal.<sup>11</sup> The Commission is approving the proposed rule change, as amended, and publishing this notice to solicit comments on Amendment Nos. 1, 2, 3, 4, 5, 6, and 7. The Commission is also approving Amendment Nos. 1, 2, 3, 4, 5, 6, and 7 on an accelerated basis.

## II. Description of the Proposal

The Exchange proposes to modify CBOE Rule 8.60 to clarify and improve the market performance evaluation of Market Participants on the Exchange.

standards." The Exchange also revised the rule text to indicate that the appropriate Market Performance Committee can find that a Market Participant has failed to satisfy its market responsibilities if the Market Participant is ranked one or more standard deviations from the mean score of all trading crowds in a periodic examination. Finally, Amendment No. 4 amends CBOE Rule 8.60(f) to specify that, for Committee action taken under proposed CBOE Rule 8.60(c)(1) through (4), Market Participants may directly appeal the action to the Board of Directors as under the current Rule, and amends CBOE Rule 8.60(g) to specify that Committee actions taken under proposed CBOE Rule 8.60(c)(5) through (11) may be appealed in accordance with Chapter XIX of the Exchange Rules.

<sup>8</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 13, 2000 ("Amendment No. 5"). Amendment No. 5 was replaced in its entirety by Amendment No. 6.

<sup>9</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 27, 2000 ("Amendment No. 6"). In Amendment No. 6, in addition to technical changes, CBOE Rule 8.60(d) was amended to clarify that the Committee may take any action listed in CBOE Rule 8.60(c) after a formal hearing, and may take any action listed in CBOE Rule 8.60(c)(5) through (11) after an informal hearing. In addition, a conforming change was made in CBOE Rule 8.60(f) to clarify that a Market Participant may appeal any Committee action taken after a formal hearing directly to the Board of Directors. This provision supersedes the change in Amendment No. 4 to CBOE Rule 8.60(f) that specified that Market Participants may appeal Committee action taken under CBOE Rule 8.60(c)(1) through (4) directly to the Board of Directors.

<sup>10</sup> See letter from Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 12, 2000 ("Amendment No. 7"). In Amendment No. 7, proposed CBOE Rule 8.60(g) was amended to clarify that Committee actions taken after an informal meeting in accordance with CBOE Rule 8.60(c)(5) through (11) may be appealed in accordance with Chapter XIX of the Exchange Rules. The amended rule language clarifies the provision set forth in Amendment No. 4.

<sup>11</sup> See letter from James Gelbort to Robert L.D. Colby, Deputy Director, Division, Commission, dated December 28, 1998 ("Gelbort Letter").

The proposed rule change should provide the appropriate Market Performance Committee ("Committee")<sup>12</sup> greater procedural flexibility in addressing the performance of Market Participants, while clarifying the due process safeguards that apply to the exercise of the Committee's authority.

The purpose of CBOE Rule 8.60 is to provide the appropriate Committee with a means to work with Market Participants to improve market quality and competition. The market performance evaluation process is designed to assist the appropriate Committee in working with Market Participants to improve their market performance. Currently, under CBOE Rule 8.60, the Committee must hold a formal hearing to impose serious sanctions such as: (1) Suspension, termination, or restriction of registration of a market maker; (2) suspension, termination or restriction of an appointment to one or more option classes; (3) restriction of appointments to additional option classes; (4) relocation of option classes; and (5) prohibiting a member from trading at a particular trading station. However, under the current Rule, the appropriate Committee does not have explicit authority to take limited remedial actions. Under the proposed rule change, the Committee would be able to take certain limited remedial actions after an informal meeting with Market Participants who have been identified through the evaluation process.

The proposal would amend CBOE Rule 8.60(a) to indicate that the Committee in evaluating whether a Market Participant is satisfactorily meeting its market responsibilities may consider: (1) Quality of markets; (2) extent of competition in the crowd; (3) due diligence in representing orders as agent; (4) adherence to ethical standards; (5) carrying out administrative responsibilities; and (6) such other matters as the Exchange may deem relevant.<sup>13</sup> Under the proposal, in addition to the survey, the Committee may also consider any other relevant information including, but not limited to, statistical measures of performance and such other factors and data as the Committee may determine to be pertinent to the evaluation of Market

<sup>12</sup> The appropriate Committee refers to the Market Performance Committee, the Index Market Performance Committee or the Modified Trading System Appointments Committee.

<sup>13</sup> The factors that may be considered under current CBOE Rule 8.60(a) are: (1) Quality of markets; (2) competition among market-makers; (3) observance of ethical standards; and (4) administrative factors.

Participants. CBOE Rule 8.60(a) is also being amended to clarify that the Rule pertains to DPMs (both market-making and agency responsibilities), market makers, and other members (individually or collectively as trading crowds).

Under the proposal, CBOE Rule 8.60(b) would be amended to indicate that the Committee may find that a Market Participant has failed to satisfy its market responsibilities, if the evaluation of the Market Participant results in a ranking that is one or more standard deviations from the mean score of all Market Participants within the Committee's jurisdiction, or if such a finding may reasonably be supported by any other relevant information known to the Committee. Currently, under CBOE Rule 8.60(b), the Committee must presume a failure to meet minimum performance standards exists for all members of a trading crowd, if the trading crowd is ranked in the bottom 10% of trading crowds in the aggregate results of the Crowd Evaluation Questionnaire.

Under the proposal, the rule language in current CBOE Rule 8.60(a) listing the sanctions for a market-maker's failure to meet minimum performance standards would be moved to paragraph (c) of the proposed rule. In addition to the more serious sanctions that are currently listed in the Rule, the proposal would amend CBOE Rule 8.60(c), to clarify that the Committee has the authority to take limited remedial actions if a Market Participant fails to satisfy its market responsibilities. Thus, under the proposed CBOE Rule 8.60(c) the Committee may take one or more of the following actions, if it finds that a Market Participant has failed to satisfy its market responsibilities:

- (1) Suspension, termination, or restriction of registration of a Market Participant (which may also include the termination of a DPM appointment);
- (2) Suspension, termination or restriction of an appointment to one or more option classes or other securities;
- (3) Relocation or reallocation of option classes or other securities to other trading crowds;
- (4) Prohibiting a Market Participant from trading at a particular trading station;
- (5) Requiring the Market Participant to submit a business plan to the Committee detailing those steps that the Market Participant intends to take to improve its performance;
- (6) Requiring that one or more Market Participants in a crowd execute 100% of their opening transactions in that crowd in person;

(7) Restricting the ability of Market Participants to participate in the Exchange's Retail Automatic Execution System ("RAES");

(8) Restricting the eligibility of a crowd to be allocated new option classes or other securities;

(9) Requiring that one or more Market Participants attend a meeting or series of meetings as the Committee shall require for the purpose of education or improving their performance as Market Participants;

(10) Requiring that all bookable orders be booked if not executed immediately upon presentation in the crowd; and

(11) Restricting the ability of Market Participants to participate in ROS.

The Exchange has indicated that it may in the future add comparable limited remedial sanctions to the Rule by filing a proposed rule change with the Commission pursuant to 19(b)(3)(A) of the Act.<sup>14</sup> CBOE Rule 8.60(c) is also being amended to delete language pertaining to the distribution of a crowd evaluation questionnaire on a six-month periodic basis. Under the proposal, the Exchange will conduct market performance evaluations twice a year as it deems necessary, but generally on a six-month periodic basis.<sup>15</sup>

The proposed rule change would amend CBOE Rule 8.60(d) to include the Rule's formal hearing and informal meeting procedures. Under the proposal, before taking any remedial action, the Committee would be required to give written notice to the Market Participant to indicate that the Committee is considering taking action and the basis for the action, and that the Market Participant is entitled to an opportunity to appear before the Committee (or a panel thereof). If the Committee contemplates taking any of the actions listed in proposed CBOE Rule 8.60(c)(1) through (4), a formal hearing with a verbatim record would be required, although the Committee would have the authority to take any action listed in CBOE Rule 8.60(c) after a formal hearing. If the Committee contemplates taking any of the actions listed in proposed CBOE Rule 8.60(c)(5) through (11) that will not be imposed for a period longer than one year, an informal meeting without the requirement of a verbatim record would be permitted. In addition, under proposed CBOE Rule 8.60(d), a Market Participant receiving written notice of potential Committee action would be

required to appear at the formal hearing or informal meeting, as applicable, and could also submit a written statement to the Committee in addition to an appearance. At such a hearing or meeting, the formal rules of evidence would not apply and the Committee would decide all questions of procedure and admissibility of evidence. If after the hearing or meeting the Committee determined that the Market Participant failed to satisfy its market responsibilities, the Committee would give written notice to all affected Market Participants reflecting the sanction ordered, the length of the sanction, and the basis for the Committee's findings and conclusions.

The proposed rule change would also amend CBOE Rule 8.60(e) to provide the Committee with the authority to impose any sanction under CBOE Rule 8.60(c) if the Market Participant failed to appear before or meet with the Committee pursuant to proposed CBOE Rule 8.60(d) and did not have a reasonable justification or excuse. CBOE Rule 8.60(e) would also be amended to indicate that a Market Participant's unexcused absence before the Committee could result in a referral to the Business Conduct Committee.

The proposal also amends CBOE Rules 8.60(f) and (g) to specify the process for taking appeals from a Committee action. Under proposed CBOE Rule 8.60(f), consistent with the current Rule, Committee actions taken after a formal hearing may be appealed directly to the Board of Directors. Proposed CBOE Rule 8.60(g) specifies any action taken by the Committee after an informal meeting in accordance with CBOE Rule 8.60(c)(5) through (11) may be appealed pursuant to Chapter XIX of the Exchange Rules. CBOE believes that Chapter XIX appeals would be procedurally duplicative for Committee actions taken after a formal hearing where a verbatim record is kept.<sup>16</sup>

Finally, the proposal amends Interpretation and Policy .01 under CBOE Rule 8.60 to provide the Committee discretion in defining whether a market maker is a member of a trading crowd.

### III. Comments

The Commission received one comment letter on the proposal.<sup>17</sup> The commenter inquired: (1) Whether the proposed restriction of RAES participation as a limited remedial

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> Telephone conversation between with Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Marc McKayle, Special Counsel, Division, Commission, on November 1, 2000.

<sup>16</sup> Telephone conversation between with Andrew D. Spiwak, Managing Director, Legal Department, Office of Enforcement, CBOE, to Marc McKayle, Special Counsel, Division, Commission on November 1, 2000.

<sup>17</sup> See Gelbort Letter, *supra* note 11.

sanction would supercede the remedial actions in CBOE Rule 8.16;<sup>18</sup> (2) whether appealing parties must be aggrieved in an economic sense when appealing pursuant to Chapter XIX of the Exchange Rules; and (3) whether inequitable results would occur because of overlapping jurisdictions of the Market Performance Committees.<sup>19</sup> In Amendment No. 1, the Exchange stated that the proposed limited remedial sanction restricting RAES participation would not supersede remedial actions under CBOE Rule 8.16. The Exchange explained that CBOE Rule 8.16 and CBOE Rule 8.60, as proposed, are not facially inconsistent with each other and may co-exist within the CBOE regulatory framework because action may be taken under one rule without implicating the other. The Exchange also explained its view that, despite the separate and distinct jurisdictions of the three Market Performance Committees, a Market Participant could not be sanctioned by more than one Committee for a single course of conduct. The Exchange also clarified that if a Market Participant received a limited remedial sanction under the proposal, it would be considered to have been aggrieved in an economic sense, and thus the sanction would be appealable pursuant to Chapter XIX of the Exchange Rules.<sup>20</sup>

#### IV. Discussion

The Commission finds that the proposed rule change is consistent with the Act<sup>21</sup> and, in particular, with section 6(b) of the Act.<sup>22</sup> Specifically, the Commission believes that the proposal is consistent with the sections 6(b)(5), (b)(6), and (b)(7) of the Act.<sup>23</sup> Section 6(b)(5) of the Act<sup>24</sup> requires that rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest.

<sup>18</sup> CBOE Rule 8.16 pertains to RAES eligibility in option classes other than the Dow Jones Industrial Index ("DJX").

<sup>19</sup> Two other issues raised by the commenter were rendered moot by subsequent amendments.

<sup>20</sup> As originally filed, the proposal allowed any Committee action to be appealed under Chapter XIX of CBOE Rules. Under Amendment No. 6, Chapter XIX procedures would be available when the Committee imposed a limited remedial sanction after an informal meeting, while sanctions imposed after a formal hearing may be directly appealed to the Board of Directors.

<sup>21</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5), (b)(6), and (b)(7).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

Section 6(b)(6) of the Act<sup>25</sup> requires an exchange to provide rules to appropriately discipline its members for violation of the provisions of the Act, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. Section 6(b)(7) of the Act<sup>26</sup> requires the rules of an exchange generally to provide a fair procedure for the disciplining of members.

The Commission finds that proposed CBOE Rule 8.60(a) is consistent with Section 6(b)(5)<sup>27</sup> because it is designed to help the Exchange maintain market quality and integrity by providing the appropriate Market Performance Committee with a means to identify Market Participants that fail to satisfy their market responsibilities. The proposed rule change amends CBOE Rule 8.60(a) to enumerate, and add, factors that the Committee may consider in evaluating whether a Market Participant satisfactorily meets its market responsibilities. The proposed rule change also amends CBOE Rule 8.60(a) to specify that the Rule pertains to DPMs, market makers, and other members (individually or collectively as trading crowds). The Commission believes that the ability of the Committee to evaluate the market performance of Market Participants should be enhanced by the addition of new factors and clarification of existing factors to be contained in the survey of members that is a part of the market performance evaluation. The proposal should also provide the Committee and Market Participants with appropriate guidance on how the Exchange evaluates the market performance of its members. The Commission notes that CBOE Rule 8.60(a) is also being amended to enable the Committee to consider any other relevant information that the Committee determines is pertinent to the evaluation of Market Participants. In such instances, where non-enumerated factors have been included in a Market Participant's evaluation, the Exchange has represented that the factors beyond those explicitly mentioned in the Rule's text would be detailed in the written notice of a Market Participant's potential failure to satisfy its market responsibilities, as required by CBOE Rule 8.60(d).<sup>28</sup> Further, the Commission

<sup>25</sup> 15 U.S.C. 78f(b)(6).

<sup>26</sup> 15 U.S.C. 78f(b)(7).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> Telephone conversation between with Andrew D. Spiwak, Managing Director, Legal Department,

notes that in order to provide appropriate guidance in the future, the Exchange should inform Market Participants of any additional factors determined to be pertinent in evaluating whether a Market Participant has satisfied its market responsibilities.

The Commission finds that proposed CBOE Rule 8.60(b) is consistent with the Act,<sup>29</sup> including section 6(b)(6),<sup>30</sup> because the Rule is part of the scheme that provides the Exchange with a means to appropriately discipline its members. The proposed rule change would amend CBOE rule 8.60(b) to indicate that the Committee may determine that a Market Participant has failed to satisfy its market responsibilities if the Market Participant evaluation results in a ranking that is one or more standard deviations from the mean score of all Market participants within the Committee's jurisdiction, or if such a finding may reasonably be supported by any other relevant information known to the Committee. The Commission believes that it is reasonable for the Committee to find that a Market Participant has failed to satisfy its market responsibilities if the Market Participant evaluation results in a ranking that is one or more standard deviations below the mean score of all Market Participants within the Committee's jurisdiction. Moreover, this evaluation should provide an objective measure as to whether Market Participants have failed to satisfy their market responsibilities.

The Exchange has represented that each Committee has exclusive jurisdiction over discrete market performance issues, and that such specialization provides the separate Committees added competence to review certain market performance matters. The Commission believes that the structure of the Exchange's market performance evaluation should permit the appropriate Committee to properly evaluate whether satisfactory market performance has been achieved by Market Participants based on the factors set forth in revised CBOE Rule 8.60(a). As indicated above, the Commission considers it essential that a Market Price Participant be fully cognizant of the factors that may bear upon the Committee's evaluation, particularly if that evaluation could result in remedial action by the Committee. Thus, the Commission expects that the Exchange

Office of Enforcement, CBOE, to Marc McKayle, Special Counsel, Division, Commission on November 1, 2000.

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 15 U.S.C. 78f(b)(6).

will fully apprise Market Participants of any other relevant information known to the Committee that influences a Committee finding that a Market Participant has failed to meet his market responsibility.

The Commission also finds that proposed CBOE Rule 8.60(c) is consistent with the Act, particularly Section 6(b)(6).<sup>31</sup> CBOE Rule 8.60(c) will be amended to include the more serious sanctions found in current CBOE Rule 8.60(a), and to clarify that the Committee also has the authority to take limited remedial actions if a Market Participant fails to satisfy its market responsibilities. The Commission believes that the proposed rule change should enhance the flexibility of the Exchange's market performance evaluation. Presently, the Exchange does not have an express mechanism to address market performance matters that may warrant remedial action, but are not serious enough to warrant suspension, termination, or restriction of a market-maker's registration under the current Rule. The proposed rule change should permit the CBOE to implement appropriate, limited remedial sanctions that will permit the Committee to take corrective measures to enhance the performance of Market Participants before more serious sanctions, such as suspension or termination, are warranted. The Commission believes that the proposal should improve the manner in which the Exchange assesses and responds to the quality of market performance by the Market Participant, which in turn should help the Exchange provide a more competitive, efficient and fair market. Specifically, the Commission finds that CBOE Rule 8.60(c) is consistent with Section 6(b)(6) of the Act<sup>32</sup> because it provides the Exchange with a means to appropriately discipline its members for violating the rules of the exchange by imposing sanctions such as suspension, limitation of activities, functions, and operations, or other fitting sanctions.

The Commission finds that proposed CBOE Rule 8.60(d) is consistent with section 6(b)(7) of the Act.<sup>33</sup> Under the proposal, CBOE Rule 8.60(d) will be amended to include all of the Rule's formal hearing and informal meeting procedures. The Commission believes that the amendments to CBOE Rule 8.60(d) should clarify the due process safeguards associated with the Committee's evaluation of a Market Participant's market performance.

Further, the Commission believes that amended CBOE Rule 8.60(d) should provide Market Participants with adequate procedural safeguards under the Rule. For instance, before any action is taken, the Committee would be required to give written notice to the Market Participant to indicate that the Committee is considering taking action and the basis for the action, and that the Market Participant is entitled to an opportunity to appear before the Committee (or a panel thereof). The Commission believes that Market Participants are provided with reasonable due process safeguards and that CBOE Rule 8.60(d), as amended, should provide a fair procedure for disciplining members, and thus is consistent with Section 6(b)(7) of the Act.<sup>34</sup>

The Commission also finds that proposed CBOE Rule 8.60(e) is consistent with Section 6(b)(6) of the Act.<sup>35</sup> The proposed rule change amends CBOE Rule 8.60(e) to authorize the Committee to impose any sanction listed under CBOE Rule 8.60(c) if a Market Participant fails to appear before the Committee, without reasonable justification or excuse, as required by proposed CBOE Rule 8.60(d). CBOE Rule 8.60(e) would also be amended to indicate that a Market Participant's unexcused absence before the Committee could result in a referral to the Business Conduct Committee. The Commission believes that CBOE Rule 8.60(e) provides appropriate discipline for violation of the provisions found in amended CBOE Rule 8.60(d), and thus is consistent with section 6(b)(6) of the Act.<sup>36</sup>

The Commission finds that proposed CBOE Rules 8.60(f) and (g) are consistent with Section 6(b)(7) of the Act.<sup>37</sup> The proposal amends CBOE Rule 8.60(f) to specify that Market Participants may appeal Committee action taken after a formal hearing directly to the Board of Directors. The proposal also amends CBOE Rule 8.60(g) to specify that after an informal meeting, a Market Participant may appeal a Committee action imposed under CBOE Rule 8.60(c)(5) through (11) to an Appeals Committee in accordance with Chapter XIX of the Exchange Rules. The Commission believes that direct appeals to the Board of Directors for Committee action taken after a formal hearing with a verbatim record should provide Market Participants with adequate procedural protections. The

Commission also believes that CBOE Rule 8.60(g), which allows Market Participants to appeal in accordance with Chapter XIX of the Exchange Rules any Committee action pursuant to CBOE Rule 8.6(c)(5) through 11 after an informal meeting, should provide adequate procedural safeguards. The Commission therefore finds that CBOE Rules 8.60(f) and (g) are consistent with Section 6(b)(7) of the Act because they provide fair procedures for the disciplining of Exchange members.<sup>38</sup>

#### V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons discussed below, the Commission finds good cause for approving Amendment Nos. 1 through 7 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 1, as outlined above, CBOE responded to various issues raised by a commenter. In Amendment No. 2, CBOE explained and clarified the procedural impact of the proposal. Specifically, Amendment Nos. 1 and 2 were of a technical, non-substantive nature, and did not significantly alter the original proposal, which was subject to a full notice and comment period. Thus, the Commission finds that granting accelerated approval to Amendment Nos. 1 and 2 is appropriate and consistent with section 19(b)(2) of the Act.<sup>39</sup>

In Amendment No. 3, CBOE amended Rule 8.60 to restrict a member's ability to participate in the ROS as a limited remedial sanction. CBOE also deleted language from the Rule's text that would have given the appropriate Market Performance Committee discretion to "take any other limited remedial action." CBOE also indicated that any additional comparable limited remedial sanctions would be added to the Rule by a proposed rule change filed with the Commission pursuant to section 19(b)(3)(A) of the Act.<sup>40</sup> The changes in proposed Amendment No. 3 should help to ensure that Market Participants are fully notified to the types of limited remedial sanctions that may be imposed under Rule 8.60. Amendment No. 3 also set forth how additional limited remedial sanctions may be added to Rule 8.60 in future. The Commission finds that Amendment No. 3 strengthens and clarifies Rule 8.60 from a procedural perspective. Thus, the Commission finds that granting

<sup>31</sup> 15 U.S.C. 78f(b)(6).

<sup>32</sup> 15 U.S.C. 78f(b)(6).

<sup>33</sup> 15 U.S.C. 78f(b)(7).

<sup>34</sup> 15 U.S.C. 78f(b)(7).

<sup>35</sup> 15 U.S.C. 78f(b)(6).

<sup>36</sup> 15 U.S.C. 78f(b)(6).

<sup>37</sup> 15 U.S.C. 78f(b)(7).

<sup>38</sup> 15 U.S.C. 78f(b)(7).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 15 U.S.C. 78s(b)(3)(A).

accelerated approval to Amendment No. 3 is appropriate and consistent with section 19(b)(2) of the Act.<sup>41</sup>

In Amendment No. 4, CBOE reorganized the text of Rule 8.60 and consolidated all remedial actions and hearing procedures into paragraphs (c) and (d), respectively, of the Rule, as amended. In addition, CBOE added language to specify that Rule 8.60 pertained to DPMs, market makers, and other members (individually or collectively as trading crowds) and not just market makers. The CBOE also amended the Rule to refer to the "market responsibilities" of market participants instead of "performance standards." The Exchange also revised the Rule's text to indicate that the appropriate Market Performance Committee can find a Market Participant has failed to satisfy its market responsibilities if the Market Participant is ranked one or more standard deviations from the mean score of all trading crowds in a periodic examination. The Commission finds that the proposed changes in Amendment No. 4 serve to clarify the intent and application of the proposal. Thus, the Commission finds that granting accelerated approval to Amendment No. 4 is appropriate and consistent with Section 19(b)(2) of the Act.<sup>42</sup>

In Amendment No. 6,<sup>43</sup> in addition to technical changes, CBOE Rule 8.60(d) was amended to clarify that the Committee may take any action listed in CBOE Rule 8.60(c) after a formal hearing, and may take any of the actions listed in CBOE Rule 8.60(c)(5) through (11) after an informal meeting. In addition, a conforming change was made in CBOE Rule 8.60(f) to clarify that a Market Participant may appeal any Committee action taken after a formal hearing directly to the Board of Directors.<sup>44</sup> The Commission finds that the proposed changes in Amendment No. 6 serve to clarify the intent and application of the proposal. Thus, the Commission finds that granting accelerated approval to Amendment No. 6 is appropriate and consistent with Section 19(b)(2) of the Act.<sup>45</sup>

In Amendment No. 7, proposed CBOE Rule 8.60(g) was amended to clarify that Committee actions taken after an

informal meeting in accordance with CBOE Rule 8.60(c)(5) through (11) may be appealed in accordance with Chapter XIX of the Exchange Rules. The Commission finds that the proposed change in Amendment No. 7 serves to clarify the intent and application of the proposal. Thus, the Commission finds that the granting accelerated approval to Amendment No. 7 is appropriate and consistent with section 19(b)(2) of the Act.<sup>46</sup>

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, 5, 6, and 7, including whether the proposed amendments are 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 the CBOE. All submissions should refer to File No. SR-CBOE-98-46 and should be submitted by January 21, 2001.

## VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>47</sup> that the proposed rule change, as amended, (SR-CBOE-98-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>48</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-33118 Filed 12-27-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43745; File No. SR-CBOE-00-58]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Interim Intermarket Linkage

December 19, 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 November 15, 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. On December 13, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange is proposing to adopt a rule providing for the implementation of "interim linkages" with the other option exchanges. Below is the text of the proposed rule change. Additions are italicized.

#### CHAPTER VIII

##### Section B: Trading Crowds

Pilot Program for Away Market Maker Access

##### Rule 8.52

(a) *Definitions. For the purposes of this Rule, the terms below have the following definitions.*

(1) *"Corresponding Rule" means a rule of a Participating Exchange that is substantially identical to this Rule 8.52.*

(2) *"Customer Size" means the lesser of (i) the number of option contracts that the Participating Exchange sending the order guarantees it will automatically execute at its disseminated quotation in an Eligible Option Class for Public Customer Orders and (ii) the number of option contracts that the Participating Exchange receiving the order*

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made technical changes to the proposed rule text and specified that the proposed interim intermarket linkage would be effective for a pilot period expiring on January 31, 2002. See letter from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 12, 2000 ("Amendment No. 1").

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> Amendment No. 5 was replaced in its entirety by Amendment No. 6.

<sup>44</sup> This provision supersedes the change in Amendment No. 4 to CBOE Rule 8.60(f) that specified that Market Participants may appeal Committee action taken under CBOE Rule 8.60(c)(1) through (4) directly to the Board of Directors.

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 15 U.S.C. 78s(b)(2).

<sup>48</sup> 17 CFR 200.30-3(a)(12).