

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.*

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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).

guarantees it will automatically execute at its disseminated quotation in an Eligible Option Class for Public Customer Orders. This number shall be no fewer than 10.

(3) "Eligible Away Market Maker" ("EAMM") means, with respect to an Eligible Option Class, a market-maker, as that term is defined in Section 3(a)(22) of the Exchange Act, on a Participating Exchange:

(A) is assigned to, and is providing two-sided quotations in the Eligible Option Class; and

(B) that is participating in its market's automatic execution system in such Eligible Option Class.

(4) "Eligible Away Designated Primary Market-Maker" ("EADPM") means: with respect to the American Stock Exchange and the Philadelphia Stock Exchange, a Specialist in an Eligible Option Class; with respect to the International Securities Exchange, a Primary Market Maker in an Eligible Option Class; and with respect to the Pacific Exchange, a Lead Market Maker in an Eligible Option Class.

(5) "Eligible Option Class" means all option series overlying a security, including both put and call options, which class is traded by the Exchange and at least one other Participating Exchange, to the extent that such Participating Exchanges have mutually agreed to include the option class in the Pilot Program.

(6) "Eligible Order" means an order for the account of a Designated Primary Market Maker or an Eligible Away Market Maker that can be sent to a Participating Exchange marked as a Public Customer Order pursuant to provisions of paragraphs (b), (c), and (d) of this Rule.

(7) "Participating Exchange" means (i) the Exchange and (ii) one or more of the American Stock Exchange, the International Securities Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange, as the President of the Exchange, or his designee, has designated from time to time as having adopted a Corresponding Rule.

(8) "Pilot Program" means the program established by this Rule and the Corresponding Rules of the other Participating Exchanges.

(9) "Principal Size" means the number of option contracts that two or more Participating Exchanges mutually agree that they will automatically execute during the Pilot Program at their disseminated quotation for orders sent for the principal account of a market-maker, and EAMM, or an EADPM that does not correspond to a Underlying Customer Order. This number shall be no fewer than 10.

(10) "Underlying Customer Order" means an unexecuted Public Customer Order for which the Designated Primary Market Maker or EADPM is acting as agent and which underlies an Eligible Order.

(b) Access to Other Participating Exchanges by Market Makers. Pursuant to the Pilot Program, a market-maker may send an order to another Participating Exchange for execution as a Public Customer only if the market-maker complies with the following conditions:

(1) the order is an immediate-or-cancel order;

(2) the price of the order is equal to the bid (offer) disseminated by the Participating Exchange at the time the market-maker sends an order to sell (buy), and such bid (offer) is equal to the national best bid (offer) in that series of an Eligible Option Class, as calculated by the Exchange;

(3) the Exchange's bid (offer) at the time market-maker sends the order to sell (buy) is not then equal to the national highest bid (offer) in that series of an Eligible Option Class, as calculated by the Exchange;

(4) the order is no larger than the Principal Size; and

(5) except with respect to orders a Designated Primary Market-Maker is sending pursuant to paragraph (c) below, the market-maker has not received an execution of another such order in the same series of an Eligible Option Class on the same Participating Exchange pursuant to the Pilot Program in the previous one minute period.

(c) Additional Access to Other Participating Exchanges by Designated Primary Market-Makers. In addition to the access to other Participating Exchanges provided in paragraph (b) above, a Designated Primary Market-Maker participating in the Pilot Program may send an order to another Participating Exchange for execution as a Public Customer if:

(1) the Designated Primary Market-Makers complies with subparagraphs (1) through (3) of paragraph (b) above;

(2) the order reflects the same terms as an Underlying Customer Order the Designated Primary Market-Maker is holding; and

(3) the order is no larger than the Customer Size.

(d) Access to the Exchange by Eligible Market-Makers on Other Participating Exchanges. Notwithstanding any other Rule of the Exchange, a Member may send to the Exchange for execution as a Public Customer Order an order for the account of an EAMM or an EADPM that complies with the Corresponding Rule of the EAMM's or EADPM's Participating Exchange.

(e) Order Need Not Be in Writing. Notwithstanding the terms of Rule 6.24, an Eligible Order need not be in writing.

(f) Implementation of the Pilot Program. The President, or his designee, may implement the Pilot Program, in whole or in part, with respect to specific Participating Exchanges, to the extent that any such Participating Exchange has agreed to implement corresponding aspects of the Pilot Program. Designated Primary Market-Maker participation in the Pilot Program shall be voluntary.

(g) This Rule will be in effect on a pilot basis until January 31, 2002.

## 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 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

The purpose of this proposed rule change is to implement certain aspects of an intermarket options linkage on an "interim" basis.<sup>4</sup> This interim linkage would utilize existing systems to facilitate the sending and receiving of order flow between CBOE market makers and their counterparts on the other option exchanges as an interim step towards development of a "permanent" linkage.

The Commission has approved a linkage plan that now includes all five option exchanges.<sup>5</sup> The option exchanges continue to work towards implementation of this linkage. However, because the implementation may take a significant amount of time, the option exchanges have discussed implementing an "interim" linkage. Such a linkage would use the existing market infrastructure to route orders between market-makers on the participating exchanges in a more efficient manner.

The key component of the interim linkage would be for the participating exchanges to open their automated customer execution systems, on a limited basis, to market-maker orders. Specifically, market-makers would be able to designate certain orders as "customer" orders, and thus would receive automatic execution of those orders on participating exchanges.

This proposed rule would authorize the CBOE to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that the initial arrangements would allow CBOE Designated Primary Market-Makers ("DPMs") and their equivalents on the other exchanges, when they are holding customer orders, to effectively send those orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size

<sup>4</sup> Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002. See Amendment No. 1, *supra* note 3.

<sup>5</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

of the two markets' automatic execution size for customer orders. The Exchange expects that the interim linkage may expand to include limited access for pure principal orders, for orders of no more than 10 contracts.

All interim linkage orders must be "immediate or cancel" (that is, they cannot be placed on an exchange's limit order book), and a market-maker may send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. This will allow a market-maker to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market-makers to attempt to "clear" another market displaying a superior quote. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their market-makers send only properly-qualified orders through the linkage.

DPM participation in the interim linkage will be voluntary. Only when a DPM and its equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The CBOE believes that the interim linkage will benefit investors and will provide useful experience that will help the exchanges in implementing the full linkage.

## 2. Statutory Basis

The proposed rule change meets the requirement of Section 6(b)(5) under the Act<sup>6</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect 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 self-regulatory organization 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 such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-58 and should be submitted by January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43750; File No. SR-CBOE-00-52]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Entitlements of Designated Primary Market Makers and Time and Priority Rules**

December 20, 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 7, 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 proposed rule change has been filed by the CBOE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6)<sup>3</sup> under the Act. 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 to increase the participation entitlements of Designated Primary Market Makers ("DPMs") when only one or two market makers are at parity with the DPM, and to clarify the operation of various CBOE rules concerning participation entitlements, time and priority rules, and orders represented by a DPM as agent. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

#### **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 of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in

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

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