

insurance company, investment company or similar institution.

The Commission also finds that Amex's proposed temporary rules regarding ITS access are a reasonable accommodation to address the physical constraints of the Amex/NYSE facility. Amex specialists, as well as specialists on BSE, CSE, CHX, PCX, NYSE, Phlx, and ITS/CAES market makers, will use their best efforts to avoid trade-throughs and locked markets, and to respond to commitments to trade during the time period chosen by the sender of the commitment as currently required by the ITS Plan. The Commission notes that, under Exchange Act Rule 11Aa3-2(d), a "reasonable justification or excuse" exists for Amex not to enforce compliance with the ITS Plan by its members and persons associated with its members for this temporary period, consistent with the terms of this order. Likewise, a "reasonable justification or excuse" exists under the Rule for the parties to the bilateral agreement (BSE, CSE, CHX, PCX, NYSE, Phlx, and Nasdaq Intermarket) not to enforce compliance with the ITS Plan by their members and persons associated with their members with respect to Amex for this temporary period, consistent with the terms of this order. Should any exchange choose not to enter into this arrangement, that exchange will be unable to send or receive ITS messages, including ITS commitments, to or from the Amex, and will not be subject to the terms of the ITS Plan with respect to the Amex; also, Amex will not be subject to the terms of the ITS Plan with respect to those exchanges. These arrangements may continue for 30 days or when the technical and logistical difficulties no longer exist at the Amex/NYSE facility, whichever is sooner. Finally, the ITS Plan will continue to govern commitments and all other transactions effected through ITS that do not involve Amex.

The Commission finds good cause for granting Amex and the other ITS Participants' request to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposal is in the public interest and for the protection of investors in order to maintain and restore fair and orderly securities markets, and in time for Amex to resume trading on September 17, 2001.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Amex-2001-78) is approved on an accelerated basis.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23466 Filed 9-19-01; 8:45 am]

**BILLING CODE 8010-10-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44801; File No. SR-CBOE-2001-49]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Temporary Access of American Stock Exchange Members to Respond to Market Developments

September 17, 2001.

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 September 14, 2001, 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 and II below, which Items have been prepared by the CBOE. On September 16, 2001, the CBOE submitted an amendment 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 and to approve the proposed rule change, as amended, on an accelerated basis.

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

In light of the emergency situation arising from the aftermath of the devastating terrorist attack on New York City on September 11, 2001, the CBOE proposes to adopt a temporary rule, which is intended by the Exchange to promote the maintenance of fair and orderly markets and the protection of investors. The temporary rule would allow the Exchange to permit a person or organization that is a member of the

American Stock Exchange LLC ("Amex") to conduct business on CBOE until emergency conditions cease, provided that the person or organization satisfies certain criteria, including that the person or organization is a member in good standing of the Amex.

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 the 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 III below. The CBOE has prepared summaries set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to adopt temporary CBOE Rule 3.22 to allow the Exchange to permit a person or organization to conduct business on the Exchange until the emergency conditions referenced above cease, provided that the person or organization (i) is a member in good standing of the Amex, (ii) is not subject to a statutory disqualification under the Act, and (iii) is not subject to an investigation conducted by any self-regulatory organization ("SRO") under the Act that may involve the fitness for membership on the exchange of that person or organization.

Pursuant to CBOE Rule 3.29, the authority granted to the Exchange under the proposed rule to permit a person or organization to conduct business on the Exchange for a temporary period during the emergency condition may be exercised by the Exchange's Membership Committee and/or Membership Department. Any person or organization granted such temporary access to conduct business on the Exchange would be referred to under the proposed rule as a TPO.

Under the proposed rule, a TPO would only be permitted to act in those Exchange capacities that are authorized by the Exchange and that are comparable to capacities in which the TPO has been authorized to act on the Amex. As part of the Exchange's

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

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

<sup>3</sup> See letter from Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE to Elizabeth King, SEC, dated September 15, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE deleted its proposal to permit Amex specialists to act in capacities similar to CBOE designated primary market makers, including acting as floor brokers on the CBOE, and clarified language that was inadvertently omitted from Item B of Exhibit 1 of the filing.

authorization of an Amex member to act in a particular capacity, the Exchange would also have the authority to determine which Exchange systems and facilities the TPO would be authorized to utilize. Additionally, the TPO would only be permitted to trade on CBOE in those securities in which the TPO is authorized to trade on the Amex.

Thus, for example, a TPO would be permitted to act as a Market-Maker in option classes on the Exchange if the TPO has been authorized to act in a comparable membership capacity in those option classes on the Amex, such as a Registered Options Trader, and the Exchange authorizes the TPO to act as a Market-Maker in those option classes. Similarly, a TPO would be permitted to act as a Floor Broker in option classes on the Exchange if the TPO has been authorized to act as a Floor Broker in those option classes on the Amex and the Exchange authorizes the TPO to act as a Floor Broker in these option classes.

Each TPO shall be subject to, and obligated to comply with, the rules of the Exchange that are applicable to Exchange members, but shall have none of the rights of a member of the Exchange, except the right to conduct business on the Exchange to the extent permitted by the proposed rule. Thus, for example, a TPO shall have no right to petition or vote at Exchange membership meetings or elections or to be counted as part of a quorum; shall have no interest in the assets or property of the Exchange; and shall have no right to share in any distributions by the Exchange.

In the event that an individual TPO is associated with an organization, the proposed rule requires the TPO to provide the Exchange, in a form and manner prescribed by the Exchange, an agreement by the organization to be responsible for all obligations arising out of that person's activities on or relating to the Exchange. CBOE Rule 3.8(d) imposes a similar requirement with respect to individual nominees of Exchange member organizations and individuals who have registered their memberships for Exchange member organizations. In addition, CBOE has represented that a TPO will be required to sign a document consenting to the Exchange's jurisdiction over the TPO and that CBOE will assume responsibility for surveillance of a TPO's activities on the Exchange.<sup>4</sup>

The Exchange believes that the proposed rule is similar to CBOE and

other SRO rules approved by the Commission in 1989 following mechanical disruptions to the Pacific Exchange, Inc. ("PCX") options floor caused by an earthquake in San Francisco under which PCX members were authorized to trade on CBOE and other options exchanges.<sup>5</sup>

The Exchange believes that it is appropriate to permit a fully qualified member of another SRO to conduct business on the Exchange on a temporary basis and in equivalent capacities when such action is in the interest of investors and the maintenance of a fair and orderly market and the person or organization is not the subject of a regulatory matter. Specifically, the proposed rule would allow the Exchange to permit Amex members to conduct business on CBOE for a temporary period when the emergency situation that exists in New York City as a result of the devastating terrorist attack on the World Trade Center complex that occurred on September 11, 2001 continues. The Exchange believes that the proposed rule would enhance liquidity in the options market and better enable broker-dealers to handle and process customer orders, which would benefit the securities markets and the investing public.

## 2. Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities, and, in general, to protect 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 appropriate in furtherance of the 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. 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 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-2001-49 and should be submitted by October 11, 2001.

## IV. Commission's Finding and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission notes that the proposed rule change was submitted in response to the emergency situation that resulted from the September 11, 2001 attacks on the World Trade Center in New York City. On September 11, 2001, the U.S. equities and options markets determined not to open in light of the attacks that morning. The U.S. equities and options markets remained closed throughout the remainder of that week. As a result of the attacks, the Amex facilities were damaged and, at this time, cannot be reopened. The CBOE seeks to accommodate Amex members by temporarily granting them access to the CBOE trading floor and facilities to trade those options that they traded on the Amex as of September 10, 2001 and that are also listed and traded on the CBOE.

The Commission further notes that any Amex member granted temporary access to CBOE as a TPO would only be permitted to trade on CBOE those securities that the TPO is authorized to trade on Amex, and to act in those capacities that are authorized by the Exchange and that are comparable to capacities that the TPO has been authorized to act on the Amex.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

<sup>4</sup> Telephone conversation between Joanne Moffic-Silver, General Counsel, CBOE, and Elizabeth K. King, Associate Director, and Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC. on September 15, 2001.

<sup>5</sup> See Securities Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989).

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

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

rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission believes that the proposal is consistent with the requirements of section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In this regard, the Commission notes that the Amex members serving as TPOs on CBOE will be subject to the jurisdiction of the Exchange and thus the Exchange will be responsible for the surveillance of TPOs to ensure that they are in compliance with applicable rules of the Exchange, as well as those rules and regulations under the Act, while conducting business on the Exchange. In addition, CBOE will be responsible for ensuring, among other things, that TPOs' quotes and trades are collected and reported to the Options Price Reporting Authority and that TPOs are disciplined for any CBOE rule violations while they are subject to the Exchange's jurisdiction.

The Commission believes that the CBOE's proposal should enable continuous and liquid markets to be maintained for those options traded on both the Amex and CBOE until the Amex can reopen for trading. By permitting Amex members to trade the products that they normally trade on the Amex should help to ensure that the level of liquidity for these options that existed as of September 10, 2001 would be available when trading resumes in the U.S. markets. This is especially important in light of the upcoming options expiration on September 21, 2001. For these reasons, the Commission believes that the proposal is in the public interest and should provide additional protections to investors when the markets reopen.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the proposed rule change immediately to provide a trading venue

for Amex members when the U.S. markets resume trading.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as amended (SR-CBOE-2001-49) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23465 Filed 9-19-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44793; File No. SR-NSCC-2001-15]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Temporary Processing Modification for Buy-In Executions

September 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 14, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to make a temporary processing modification for buy-in executions.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

The purpose of the proposed rule change is to make a temporary processing modification for buy-in executions. Under NSCC's buy-in process, NSCC includes information regarding buy-in liability on its CNS Projection Report. Due to the recent tragic events, many NSCC members are operating out of alternate operational sites. Many of these members, for various reasons associated with recent events, have had connectivity difficulties with NSCC. NSCC therefore is concerned that notice of buy-in liability may not have been received by affected members. NSCC therefore intends to not permit buy-in executions when market trading resumes for both the day trading resumes and the day thereafter. Any notice of intention to buy-in affected by this filing will be required to be resubmitted to NSCC.

The proposed rule change will facilitate the orderly, prompt, and accurate clearance and settlement of securities transactions. Thus, the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>3</sup> Due to recent communications and

<sup>8</sup>In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>10</sup>15 U.S.C. 78s(b)(2).

<sup>11</sup>17 CFR 200.30-3(a)(12).

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

<sup>2</sup>The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup>15 U.S.C. 78q-1(b)(3)(F).