

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45226; File No. SR-CBOE-2001-69]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trade Information Submitted to the Exchange

January 3, 2002.

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 December 21, 2001, the Chicago Board of 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 Exchange filed Amendment No. 1 to the proposed rule change on December 26, 2001.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on January 2, 2002.<sup>4</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 proposes to amend the provisions of Interpretation and Policies

.02 of CBOE Rule 6.51 to provide that members include the required trade information on orders that they submit to the Exchange. The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

Chapter VI—Doing business on the Exchange Floor

#### Section C: Trading Practices and Procedures

\* \* \* \* \*

##### Reporting Duties

- RULE 6.51.(a) No change.
- (b) No change.
- (c) No change.
- (d) No change.

##### Interpretations and Policies

.01 No change.  
 .02 *When entering orders on the Exchange, each Member shall submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Clearing Corporation.* [For purposes of Rule 6.51(d), trade information shall include the proper account origin codes, which are as follows: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignment as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist.]

.03 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 Exchange 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 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

The Exchange states that the proposed rule change mimics the International Securities Exchange LLC ("ISE") Rule 712<sup>5</sup> and amends Interpretations and Policies .02 of CBOE Rule 6.51 ("CBOE Rule 6.51.02") to mandate that each Member must submit trade information in such form as may be prescribed by the Exchange in order to allow the Exchange to properly prioritize and route orders pursuant to the rules of the Exchange and report resulting transactions to the Options Clearing Corporation ("OCC").<sup>6</sup> CBOE Rule 6.51(d) requires members to file with the Exchange trade information in such form as may be prescribed by the Exchange. CBOE Rule 6.51.02 states that "trade information" for purposes of Rule 6.51(d) shall include account origin codes. The purpose of this marking requirement is primarily twofold. First, origin codes ensure that orders route to the proper location (e.g., PAR, RAES, Booth) and they provide the Exchange with a mechanism by which to surveil whether members are in fact marking orders correctly. Second, the marking requirement assists the OCC in the clearance of trades.

The Exchange currently lists seven origin codes in CBOE Rule 6.51.02,<sup>7</sup> and it has the systems capacity to accommodate 26 origin codes (one for each letter of the alphabet). Because the Exchange's origin codes are specifically listed in its rules, each time the Exchange determines to add, delete, or change an origin code, it must submit a rule filing to the Commission. This could require the submission of 19 separate rule filings if the Exchange were to add 19 new origin codes at different times.<sup>8</sup>

<sup>5</sup> Securities Exchange Act Release No. 43795 (January 3, 2001), 66 FR 2468 (January 11, 2001).

<sup>6</sup> Currently, Interpretations .02 states that trade information submitted under CBOE Rule 6.51(d) includes certain specific origin codes.

<sup>7</sup> The Exchange currently uses the following origin codes: "c" for a customer account, "f" for a firm proprietary account, "m" for a member market-maker account, "j" for a non-member joint venture participant transaction in Exchange options contracts, "y" for any options account of a stock specialist relating to his assignments as specialist on the primary market for the underlying stock, "b" for a customer range account of a broker-dealer, and "n" for any account of a non-member market-maker or specialist relating to his assignment in a class of options listed for trading both at this Exchange and at the exchange of the market-maker or specialist. See CBOE Rule 6.51.02.

<sup>8</sup> Over the next several months, the Exchange anticipates listing several new origin codes to

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<sup>8</sup> 17 CFR 200.20-3(a)(12).

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

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

<sup>3</sup> See letter from Madge M. Hamilton, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE made certain technical amendments to the proposal, amended the purpose section of the proposal and provided an enhanced statutory basis for the proposal. In addition, the CBOE requested that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> See letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 28, 2001 ("Amendment No. 2"). In Amendment No. 2, the CBOE again amended the purpose section of the proposal, enhanced the statutory basis of the proposal and reiterated its request that the Commission waive the 30-day period under which the proposal would become operative under Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Exchange proposes to delete the language from CBOE Rule 6.51.02 that specifically references the seven specific origin codes and instead, replace it with language stating that members must "submit trade information in such form as may be prescribed by the Exchange." This change will have two primary effects. First, it would eliminate the need for the Exchange to submit a rule filing each time it adds, deletes, or changes an origin code. Second, and more importantly, it would allow the Exchange to continue to ensure that members submit requisite trade information, including origin codes, in an Exchange-dictated manner.

The Exchange notes that the proposed change to CBOE Rule 6.51.02 would not eliminate the requirement that members submit tickets with origin codes. Rather, this change simply eliminates the specific origin codes from CBOE Rule 6.51.02. Members would still be required to submit orders with origin codes. Upon approval of this filing, the Exchange will notify members of the current order marking requirements (*i.e.*, valid origin codes) by regulatory circular. As such, each time the Exchange adds, deletes, or changes an origin code, it will distribute a regulatory circular to the membership apprising it of the change. The Exchange believes that this will ensure that the Exchange's membership is aware of the applicable origin codes with which it must mark order tickets.

## (2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(5),<sup>10</sup> in particular, in that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would enhance the Exchange's ability to surveil for and investigate potential fraudulent and manipulative

accommodate linkage orders. This could require the submission of several rule filings if all origin codes are not added at the same time. For example, "Principal Account" orders will require a separate origin code, "Principal Acting as Agent" orders will require a separate origin code, and "Principal Account Satisfaction Order" will require another separate code.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

conduct. Since the proposed rule change would enhance the Exchange's ability to conduct investigations and surveillance for misconduct, it would protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4<sup>12</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

The Commission notes that under Rule 19b-4(f)(6)(iii), the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date.<sup>14</sup> The Exchange contends that acceleration of the operative date is consistent with the protection of

investors and the public interest because the language of this proposed rule is substantially similar to rule language that was put out for notice and comment when ISE submitted its proposed rule change. For this reason, consistent with Section 19(b)(2) of the Act,<sup>15</sup> the Commission finds good cause to waive the 30-day operative period.<sup>16</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2001-69 and should be submitted by January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on January 2, 2002, the date the CBOE filed Amendment No. 2.

<sup>14</sup> See Amendment No. 2, *supra* note 4.