

Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Amex-2002-01 and should be submitted by February 1, 2002.

#### IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In its original approval of the pilot program,<sup>11</sup> the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.<sup>12</sup> The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,<sup>13</sup> and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will extend the pilot program without significant interruption while revisions are considered, and does not raise any new regulatory issues.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through April 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

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<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> See *supra*, note 3.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and (b)(8).

<sup>13</sup> See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45244; File No. SR-CBOE-00-56]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change, To Allow Certain Orders Entered Through the Exchange's Order Routing System To Automatically Trade Against Orders in the Exchange's Customer Limit Order Book

January 7, 2002.

#### I. Introduction

On November 13, 2000, 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 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow certain orders entered through the Exchange's Order Routing System ("ORS") to automatically trade against orders in the Exchange's customer limit order book. The proposed rule change was published in the **Federal Register** on June 4, 2001.<sup>3</sup> The Commission received one letter and one e-mail, submitted by the same commenter, regarding the proposed rule change.<sup>4</sup> On October 1, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup>

This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on the amendment.

#### II. Description of the Proposed Rule Change

The CBOE's Automated Book Priority System ("ABP") allows an order entered into the Exchange's Retail Automatic

Execution System ("RAES") to trade directly with an order on the Exchange's customer limit order book when the best bid (offer) on the Exchange's book is equal to the prevailing market bid (offer).<sup>6</sup> However, orders entered into the RAES system are subject to size limitations. The Exchange now proposes to expand the application of the ABP system to allow booked orders to trade directly with incoming marketable public customer orders routed through ORS which, because of their larger size, are ineligible for RAES.<sup>7</sup>

Currently, when a non-RAES eligible order is entered into the Exchange's ORS and the best bid (offer) on the Exchange's book is equal to the prevailing market bid (offer), the order is routed to a Floor Broker's terminal, a work station in the crowd, or the order-sending firm's booth. CBOE submits that this helps ensure that such orders are handled and executed in a manner consistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. However, CBOE states that once an order is so routed, it becomes subject to market risk, as there may be some delay between the time the order is rerouted and the time it is actually filled in open outcry. CBOE believes that in times of extreme market volatility this delay could have a significant effect on the price at which the order is executed.

Under the proposal, an incoming marketable public customer ORS order would be automatically executed against a customer limit order in the book that represents or equals the prevailing best bid (offer) up to the size of that booked order. Any remaining balance of the ORS order would then be instantly rerouted through the ORS as if it were a new order, which could, among other things, include handling under CBOE's RAES Rule (Rule 6.8). The proposed rule change also provides that no automatic execution would take place at a price inferior to the current best bid (offer) in any other market.

The proposed change would be contained in proposed new Rule 6.8.B. The new rule would further provide that the appropriate Floor Procedure Committee ("FPC") could determine

<sup>6</sup> See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

<sup>7</sup> CBOE represents that the term "marketable public customer order" means a market or marketable limit order that is not for an account in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including foreign broker-dealer) has an interest. E-mail from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division, Commission, dated December 26, 2001.

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

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

<sup>3</sup> Securities Exchange Act Release No. 44356 (May 25, 2001), 66 FR 30033 (June 4, 2001) ("Notice").

<sup>4</sup> See Letter to the Secretary, Commission, dated June 3, 2001, and e-mail submitted to the Division of Market Regulation, Commission, dated June 4, 2001, from Mike Ianni ("Ianni Comments").

<sup>5</sup> See Letter from Angelo Evangelou, Attorney, CBOE, to Andrew Shipe, Attorney, Division of Market Regulation, Commission, dated September 28, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE clarified that the authority to exempt an option class from the provisions of the proposed rule change during unusual market conditions could be delegated by the Chairman of the appropriate Floor Procedure Committee only to another member of that Committee.

which option classes would be subject to the rule. Furthermore, the proposed rule would allow two Floor Officials, the FPC Chairman, or the Chairman's designee to exempt an option class or classes from the proposed rule's requirements if warranted by unusual market conditions.<sup>8</sup>

### III. Summary of Comments

The one commenter who expressed views on the proposed rule change generally supported the proposal. However, the commenter expressed concern that the proposal would not be implemented in all classes of CBOE-listed options, but only as determined by the appropriate FPC. The commenter submitted that ABP should be engaged for all classes of options, rather than implemented on a selective basis.<sup>9</sup>

### IV. Discussion

The proposal would extend CBOE's ABP system to marketable public customer orders entered into the Exchange's ORS, on a class-by-class basis. The Commission believes that this expansion of the ABP system should benefit customers using the ORS system, as well as customer whose orders are residing in the Exchange's book, because these orders would be subject to quicker executions. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

### V. Amendment No. 1

The Commission further finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the

<sup>8</sup> According to the Exchange, unusual market conditions may include drastic movement in the security underlying an option or new pending about the issuer of the underlying security. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Andrew Shipe, Attorney, Division, Commission, on September 5, 2001. See also Securities Exchange Act Release No. 43829 (January 10, 2001), 66 FR 4877, 4878, n.8 (January 18, 2001).

<sup>9</sup> See Ianni Comments.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

**Federal Register.** In Amendment No. 1, the Exchange clarified that the Chairman of the appropriate FPC may designate his authority to exempt an option class from the provisions of paragraph (a) of the proposed rule during unusual market condition only to another member of the FPC. The Commission notes that Amendment No. 1 merely clarified who is eligible to be the "Chairman's designee" for purposes of the proposed rule. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>12</sup> to approve Amendment No. 1 on an accelerated basis.

### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 at 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-00-56 and should be submitted by February 1, 2002.

### VII. Conclusion

For the foregoing reasons, the Commission finds that CBOE's proposal to amend its rules to allow for certain orders entered through the Exchange's Order Routing System to automatically trade against orders in the Exchange's customer limit order book, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-00-56), as amended, is approved.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45246; File No. SR-NYSE-2001-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2001, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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 proposed rule change consists of amendments to NYSE Rule 123. The proposed rule text follows: Additions are *italicized*, deletions are [bracketed].

#### Rule 123—Records of Orders

Paragraphs headed "Given Out", "Receipt of Orders", "Cancelled or Executed", and "By Accounts", to be numbered (a), (b), (c) and (d), respectively.

#### (e) System Entry Required

Except as provided in paragraphs .21 and .22 below, no Floor member may represent or execute an order on the Floor of the Exchange unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements,

<sup>14</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.