

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 Amex. All submissions should refer to File No. SR-Amex-2001-76 and should be submitted by April 12, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-2001-76), as amended, except for the portion that states that it is presumed for orders sent through the Exchange's order routing systems that the member has requested a collective response, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45571; File No. SR-CBOE-2001-71]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations in Determining Sanctions and To Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules

March 15, 2002.

I. Introduction

On December 26, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt sanctioning guidelines and to incorporate in its Minor Rule Violation Plan violations of the Exchange's order

handling rules.³ The proposed rule change was published for comment in the **Federal Register** on February 14, 2002.⁴ On March 7, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ No comments were received on the proposed rule change. This order granted accelerated approval to the proposed rule change and issues notice of filing and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 17.11 (Judgment and Sanction) to incorporate certain Principal Considerations in Determining Sanctions ("Principal Considerations") to be applied by the Exchange's BCC in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the Exchange proposes to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its MRP violations of the Exchange's order handling rules, including violations of firm quote requirements pursuant to Exchange Rule 8.51; failure to promptly book and display limit orders that would improve the disseminated quote pursuant to Exchange Rules 7.7 and 8.85(b); failure to honor the priority of marketable customer orders maintained in the Customer Limit Order Book pursuant to Exchange Rule 6.45; and failure to use due diligence in order execution pursuant to Exchange Rules 6.73 and 8.85(b). The proposed rule change would provide both a range of fines as well as non-monetary sanctions

³ The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.1 of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order").

⁴ See Securities Exchange Act Release No. 45427 (February 8, 2002), 67 FR 6958.

⁵ See letter from Edward Joyce, President and Chief Operating Officer, CBOE, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated March 1, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the Exchange would aggregate individual violations of options order handling rules and treat such violation as a single offense only where such aggregation is based on a comprehensive automated surveillance program. In addition, the Exchange clarified that a sixth and subsequent violation of the options order handling rules would be referred to the Business Conduct Committee ("BCC") and not treated under the Exchange's Minor Rule Plan ("MRP").

that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization.⁶ The proposed guidelines would also allow for non-monetary sanctions such as suspension, expulsion, or other sanctions in egregious cases. Finally, the proposed rule change would also permit any member who is issued a summary fine notice to have the opportunity to submit one written offer of settlement to the BCC.

III. Discussion

After careful review, 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.⁷ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁸ 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. The Commission also finds that the proposed rule change is consistent with section 6(b)(6) of the Act,⁹ which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, 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.

Moreover, the Commission notes that the Exchange submitted a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where such violations are identified through the Exchange's automated surveillance

⁶ The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 21, 2001.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(6).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

systems.¹⁰ The Commission believes that the compliance thresholds proposed in this letter provide a reasonable first step and should assist the Exchange in disciplining its members for violations of the Exchange's order handling rules. The Commission expects, however, that as compliance rates improve, the Exchange will adjust the compliance thresholds accordingly. Consequently, the Commission's approval of the proposed rule change is contingent on the Exchange providing notice to the Commission's Office of Compliance Inspections and Examinations of any future changes to this letter, and to any other sanctioning guidelines not codified in the Exchange's rules.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.¹¹

Furthermore, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change was noticed for the full comment period and the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies when the Exchange may aggregate multiple violations and when subsequent offenses would be referred to the Exchange's BCC and not treated under the Exchange's MRP. Amendment No. 1 also clarifies that the Exchange may aggregate multiple violations into a single offense only where such aggregation is based upon a comprehensive automated surveillance program. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with sections

6(b)(5)¹² and 19(b)(2) of the Act,¹³ to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

IV. 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 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 number SR-CBOE-2001-71 and should be submitted by April 12, 2002.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, 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,¹⁴ that the proposed rule change (SR-CBOE-2001-71) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45577; File No. SR-CBOE-2001-64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange Inc. Relating to AutoQuote Parameters

March 15, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the Exchange's AutoQuote System. The **Federal Register** published the proposed rule change for comment on February 12, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE submitted the proposed change to Interpretation and Policy .07 to CBOE Rule 8.7 pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,⁴ which requires in part that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class * * *." The proposed amendment to Interpretation and Policy .07 to CBOE Rule 8.7 would permit market makers to coordinate in setting the components of the formula used by an automated quotation updating system, or AutoQuote.⁵

AutoQuote is the Exchange's electronic quotation system that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 45394 (February 5, 2002), 67 FR 6556.

⁴ See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

⁵ For purposes of this filing and the proposed interpretation, the term AutoQuote is used to refer to both the Exchange's own automatic quotation system that is offered to trading crowds to generate quotes and to proprietary automated quotation updating systems that are used by trading crowds, DPMs, LMMS, SMMs, or appointed market-makers to generate quotes in lieu of or in addition to the Exchange's own AutoQuote system.

¹⁰ See *supra* note 6.

¹¹ The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).