

change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on April 17, 2002.⁵ The Commission received one comment on the proposed rule change.⁶ On May 16, 2002, the Amex filed Amendment No. 3 to the proposed rule change.⁷ The proposed rule change, as amended by Amendment No. 3, was published in the **Federal Register** on May 30, 2002.⁸ On July 12, 2002, the Exchange withdrew the proposed rule change.⁹

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46183; File No. SR-CBOE-2002-32]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Time and Manner in Which the Appropriate Allocation Committee May Reallocate a Security

July 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 11, 2002, 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 CBOE. The Commission is publishing this notice to

⁴ See letter from Claire McGrath, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 14, 2002.

⁵ See Exchange Act Release No. 45727 (April 10, 2002), 67 FR 18962.

⁶ See letter from Brandon Becker, Wilmer, Cutler & Pickering, to Jonathan G. Katz, Secretary, Commission, dated May 2, 2002.

⁷ See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002.

⁸ See Exchange Act Release No. 45972 (May 21, 2002), 67 FR 18962.

⁹ See Letter from, Geraldine Brindisi, Vice President and Corporate Secretary, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated July 12, 2002.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend CBOE Rule 8.95 ("Allocation of Securities and Location of Trading Crowds and DPMs") to extend, from six months to one year, the time in which the appropriate Allocation Committee may reallocate a security if the trading crowd or Designated Primary Market-Maker ("DPM") to which the security had been allocated fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. The text of the proposed rule change is available at the 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 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

CBOE Rule 8.95(c) currently provides that during the first six months following the allocation of a security to a trading crowd or DPM, the appropriate Allocation Committee may remove the allocation and reallocate the security, if the trading crowd or DPM fails to adhere to any market performance commitments made by the trading crowd or DPM in connection with receiving the allocation. CBOE now proposes to amend CBOE Rule 8.95(c) to extend the initial review period from six months to one year under which the appropriate Allocation Committee may exercise this authority.

According to CBOE, the appropriate Allocation Committee typically requests that trading crowds and DPMs make market performance commitments as part of their applications to receive allocations of particular securities. These commitments may relate to pledges to keep bid-ask spreads within a particular width, or pledges to make

every effort possible to become the exchange of choice in a particular option class, as measured during the initial months of trading by consistently achieving a certain market share if the class is listed on more than one options exchange. CBOE Rule 8.95(c) permits the appropriate Allocation Committee to remove an allocation if these commitments are not met, thus giving trading crowds and DPMs an incentive to abide by these commitments.

CBOE believes that extending the initial review period from six months to one year is appropriate because it will provide the appropriate Allocation Committee additional time to evaluate whether a particular DPM or trading crowd has adhered to any market performance commitments it made in connection with being allocated the security.

Following this initial review period after an allocation is made, CBOE notes that all the responsibility for monitoring market performance with respect to that security is vested in the appropriate Market Performance Committee or MTS Appointments Committee, which continually evaluate trading crowd and DPM market performance, as applicable, and are authorized pursuant to CBOE Rule 8.60, CBOE Rule 8.90, and other Exchange Rules to take remedial action for failure to satisfy minimum market performance standards.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act³ in that it is designed to remove impediments to a free and open market and protecting 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 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

Within 35 days of the publication of this notice in the **Federal Register** or

³ 15 U.S.C. 78f(b)(5).

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 Exchange 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 will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-CBOE-2002-32 and should be submitted by August 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46185; File No. SR-CBOE-2002-31]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Handling of Customer Orders

July 11, 2002

On June 10, 2002, the Chicago Board Options Exchange, Incorporated

("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")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish the Large Order Utility ("LOU"). Through LOU, eligible customer orders larger than CBOE's maximum "auto-ex" size for the relevant option would be stopped at the Exchange's disseminated price up to the size of the Exchange's disseminated quote, and subsequently routed to the trading crowd for possible price improvement and allocation in open-outcry.³ Thus, LOU would allow for price-improvement while guaranteeing an execution at a price equal to or better than the stop price. If price improvement was not attainable in the open-outcry, the order would be allocated at the stop price among the members of the trading crowd under specified procedures.⁴

The proposed rule change was published for comment in the **Federal Register** on June 19, 2002.⁵ The Commission received no comments on the proposal. On July 10, 2002, the CBOE filed Amendment No. 1 to the proposed rule change, in which it requested that the Commission find good cause to approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ To be eligible for LOU, an incoming order would be required to: (i) be a market order or marketable limit order that is not for an account in which a member or any non-member broker-dealer (including foreign broker-dealer) has an interest; (ii) be of a size greater than the eligibility limit of CBOE's Retail Automatic Execution System ("RAES") for the subject option series; (iii) be in an option class which is designated by the appropriate Floor Procedure Committee as eligible for LOU; and (iv) not be an order routed to CBOE through intermarket linkage. Further, at the time of the order's receipt, (i) the CBOE quote would be required to be priced equal to the National Best Bid or Offer; (ii) the requirements of CBOE Rule 6.8.B (governing automated book priority for larger than RAES-size public customer orders received through the Exchange's Order Routing System) would have to be in effect for the subject option class; and (iii) the CBOE quote could not be a manual quote.

⁴ The order would be assigned in a manner consistent with existing open-outcry procedures under CBOE Rules 6.45 and 8.87. To the extent any order is not fully assigned in open-outcry, an "In-Person Wheel" would evenly assign contracts to market-makers present in the crowd up to a 5-contract maximum per order. If the In-Person Wheel has been exhausted for a particular LOU order and a balance still remains on the LOU order, the entirety of such balance would be assigned in accordance with the RAES trade allocation methodology in effect for the subject option class.

⁵ See Securities Exchange Act Release No. 46073 (June 13, 2002), 67 FR 41743.

⁶ See Letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Ira Brandriss, Special Counsel, Division of Market Regulation,

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 exchange⁷ and, in particular, the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ because, by automatically securing the Exchange's disseminated prices for customer orders up to the disseminated size of the Exchange, while allowing for potential price improvement for those orders, it should benefit customers and improve the overall efficiency of the market. In addition, the Commission finds that the manner of allocating contracts in the crowd under the proposed rule change is consistent with equitable principles.

The Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve 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 Commission notes that the CBOE has represented that all required systems work for LOU has been completed and successfully tested, and that the CBOE is prepared to begin utilizing the system within a week of approval by the Commission.¹⁰ The Commission believes that accelerated approval of this proposal should permit the CBOE to immediately begin providing customers with the benefits described above, and serve to enhance competition among the markets.

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹¹, that the proposed rule change (File No. SR-CBOE-2002-31) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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Commission, dated July 9, 2002 (Amendment No. 1).

⁷ In approving this proposed rule change, the Commission notes that it 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.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Amendment No. 1, *supra* note 6.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

⁴ 17 CFR 200.30-3(a)(12).