

The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m. is now scheduled for the Open Meeting on Wednesday, October 30, 2002, at 10 a.m.:

The Commission will consider whether to propose amendments to the definition of terms used in the exception from the definition of dealer for banks under Section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to propose amendments to the related exemption for banks, savings associations, and savings banks as well as propose a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of "broker" and "dealer" that were amended by the Gramm-Leach-Bliley Act.

The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m., is now scheduled for the Open Meeting on Wednesday, November 6, 2002 at 10 a.m.

The Commission will consider proposed rules establishing standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers, as required by Section 307 of the Sarbanes-Oxley Act of 2002. These standards would include a rule requiring an attorney to report "evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof" to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

The subject matter of the Closed Meeting scheduled for Wednesday, November 6, 2002 will be: settlement of injunctive actions; and adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 28, 2002.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46716; File No. SR-CBOE-2002-59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Margin Requirements for Broker-Dealer Accounts

October 24, 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 September 25, 2002, the Chicago Board Options Exchange, Inc. ("CBOE") 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 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 its margin rule pertaining to the accounts of broker-dealers in order to establish parity with the requirements for Joint Back Office ("JBO") participants.³ The text of the proposed rule change appears below. New text is in italics; deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

CHAPTER XII

Margins

No change to Rules 12.1 and 12.2.

Rule 12.3 Margin Requirements

(a) through (f)—(no change).

(g)(i) Broker-Dealer Account. A member organization may carry the proprietary account of another broker-dealer, which is registered with the SEC, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A JBO participant purchases an ownership interest in a clearing broker-dealer. Regulation T of the Board of Governors of the Federal Reserve System permits a clearing broker-dealer to finance transactions of its JBO owners on a good faith basis rather than pursuant to the margin otherwise required by Regulation T.

condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this Rule] *haircut requirements calculated pursuant to Rule 15c3-1 (Net Capital) of the Exchange Act* shall be deducted in computing the Net Capital of the member organization under Rule 15c3-1 of the Exchange Act.

* * * * *

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

In its filing with the Commission, 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 is proposing a change to CBOE Rule 12.3(g)—Margin Requirements (Broker-Dealer Account). When a member organization carries the proprietary account of another broker-dealer, CBOE Rule 12.3(g)(i), in effect, exempts the account from the minimum maintenance margin requirements imposed by CBOE Rule 12.3 and allows the member organization to carry the account on a margin basis that is satisfactory to both parties. However, the rule currently requires that if account equity is below the minimum maintenance margin requirements of CBOE Rule 12.3, the carrying member organization must deduct the amount of the deficiency in computing its net capital under Rule 15c3-1 under the Act.⁴ The CBOE proposes to change the amount that must be deducted for net capital purposes under Rule 12.3(g)(i) to the amount, if any, by which the equity maintained in the account is below the haircut requirements prescribed by Rule 15c3-1.

The New York Stock Exchange, Inc. ("NYSE") has a comparable rule (Rule 431(e)(6)(A)) that was amended in February 2000⁵ to eliminate the maintenance margin standard and

⁴ 17 CFR 240.15c3-1.

⁵ See Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR-NYSE-97-28).

implement the haircut standard as the equity benchmark. Thus, the CBOE believes that the proposed rule change would make CBOE Rule 12.3(g) consistent with NYSE Rule 431(e)(6)(A).

NYSE Rule 431(e)(6)(A) was changed to gain consistency with NYSE Rule 431(e)(6)(B)—Joint Back Office Arrangements. In 2000, both the CBOE and NYSE instituted similar margin and net capital requirements for member organizations that carry accounts on a JBO basis. In addition, certain requirements were imposed on JBO participants, which included a broker-dealer registration requirement. The CBOE and NYSE JBO rules do not impose exchange maintenance margin requirements on JBO accounts, but instead require that the carrying firm, in computing its net capital, deduct any amount by which equity in the JBO account is below the haircut requirement. At the same time, the NYSE amended NYSE Rule 431(e)(6)(A) on the grounds that, since a JBO participant is a broker-dealer, a broker-dealer account (non-JBO) should receive the same treatment accorded the JBO account for computing a deduction to net capital. Likewise, the CBOE believes that the proposed rule change would make the treatment of broker-dealers under CBOE Rule 12.3(g) consistent with the treatment of JBO participants under the CBOE's JBO rules.⁶

2. Statutory Basis

The proposed rules are intended to harmonize the margin treatment across types of broker-dealer accounts, as well as between CBOE's rule and the analogous NYSE rule. As such, the CBOE believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,⁷ in that it is designed to perfect the mechanism of a free and open market and 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 competition that is not necessary or appropriate in furtherance of 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder⁹ because the proposed rule change (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the CBOE has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.¹⁰ At any time within 60 days of the filing of the 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 the furtherance of the purposes of the Act.¹¹

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 all such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-2002-59 and should be submitted by November 21, 2002.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ As required under Exchange Act Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

¹¹ 15 U.S.C. 78s(b)(3)(C).

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 02-27687 Filed 10-30-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46717; File No. SR-DTC-2002-12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to DTC's Memo Segregation Procedures

October 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 3, 2002, The Depository Trust Company ("DTC") 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 primarily by DTC. 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 enhancements to the Memo Segregation ("Memo Seg") procedures of DTC.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The proposed rule change makes enhancements to DTC's existing Memo

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

⁶ See CBOE Rule 13.4(b)(3).

⁷ 15 U.S.C. 78f(b)(5).