

provision for the pass-through of all miscellaneous fees to its members who incur such charges as a result of trading activity on the Exchange. The provision would allow for, among other things, as applicable, the pass-through of all Nasdaq fees, other market center access fees, ECN access fees, trading-related telecommunications charges, market data service charges, and other similar charges.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,<sup>6</sup> in general, and section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is 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

The Exchange has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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.

## 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-BSE-2003-03 and should be submitted by June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47818; File No. SR-CBOE-2003-02]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Reporting of Other Affiliations of Associated Persons to the Exchange

May 8, 2003.

#### I. Introduction

On January 9, 2003, 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 relating to a member's obligation to report other affiliations of its Associated Persons ("APs") to the Exchange. Notice of the proposed rule change was published for comment in the **Federal Register** on February 5, 2003.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> On

March 10, 2003, CBOE filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended.

## II. Description of the Proposed Rule Change

### A. Text of the Proposed Rule Change

The Exchange proposes to amend its rules requiring members to report outside business affiliations of their personnel to the Exchange. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].<sup>6</sup>

\* \* \* \* \*

### Chicago Board Options Exchange, Inc. Rules

\* \* \* \* \*

#### Rule 3.6A. Qualification and Registration of Certain Associated Persons

(a) Financial/Operations Principal. Each individual member or member organization subject to Exchange Act rule 15c3-1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the member complies with applicable financial and operational requirements under the rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by a member shall be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange. A Financial/Operations Principal of a

A.G. Edwards & Sons, Inc., to Jonathan Katz, Secretary, Commission. The commenter expressed support for the proposed rule change.

<sup>5</sup> In Amendment No. 1, CBOE added a comma immediately following the phrase "Financial / Operations Principal" in revised CBOE rule 9.4. This grammatical correction clarifies the scope of application of rule 9.4(b) to Registered Options Principals and Sales Supervisors, in accordance with the intent of the proposal, as described in the Notice. This is a technical amendment to the proposed rule change that does not require notice and comment. See e-mail from Jaime Galvan, Attorney, CBOE, to Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, dated March 10, 2003 ("Amendment No. 1").

<sup>6</sup> The text of the proposed rule change was published in the notice. This publication of rule text corrects a typographical error in the notice to show that the phrase "and Registered Representative" in revised CBOE rule 9.4(b) should have been marked as deleted by placing it in [brackets].

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</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.

<sup>3</sup> See Securities Exchange Act Release No. 47290 (January 30, 2003), 68 FR 5945 ("Notice").

<sup>4</sup> March 6, 2003 letter from Brian C. Underwood, Senior Vice President—Director of Compliance,

member may be a full-time employee [of the member], [or with the prior written approval of the Exchange, may be] a part-time employee or independent contractor of the member. *Member firms for which the Exchange is the Designated Examining Authority ("DEA") must provide prompt written notice to the Exchange's Department of Financial and Sales Practice Compliance for each person designated as a Financial/Operations Principal reporting whether such person is a full-time employee, part-time employee, independent contractor or has any outside business affiliations.*

(b) No change.

\* \* \* *Interpretations and Policies:*  
.01—.03 No change.

\* \* \* \* \*

## CHAPTER IX

\* \* \* \* \*

### Doing Business with the Public

Rule 9.4. Other Affiliations of Registered [Representatives] *Associated Persons*

(a) *No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person or entity as a result of any business activity, other than a passive investment, outside the scope of his/her relationship with his/her employer firm, unless the person has provided prompt written notice to the member and has received prior written consent of the member.*

(b) *Except with the prior written consent of the member and [express] prompt written notice to [permission of] the Exchange, every Registered Options Principal, Sales Supervisor, and Financial/Operations Principal, registered with a member for which the Exchange is the Designated Examining Authority ("DEA") [and Registered Representative] shall devote his/her entire time during business hours to the business of the member organization employing [him] or compensating him/her. [or to the business of its affiliates which are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the Exchange.]*

\* \* \* \* \*

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

Currently, CBOE rule 9.4 ("Other Affiliations of Registered Representatives") requires a member firm's Registered Representatives and Registered Options Principals ("ROPs") to obtain express written permission

from the Exchange in order to engage in any business, other than that of their member organization, during business hours. Further, CBOE rule 3.6A ("Qualification and Registration of Certain Associated Persons") provides that a member firm may employ a part-time employee or independent contractor as a Financial/Operations Principal, provided that it receives the prior written approval of the Exchange to do so.

Pursuant to the proposed rule change, CBOE would amend rule 9.4 to apply to all of a member firm's registered APs. The rule would now provide that, other than in the case of a passive investment, all such persons would be required to give prompt written notice to the employing member, and to receive the member's prior written consent, with respect to outside business activities. Where CBOE is the firm's Designated Examining Authority, and the AP in question is a ROP, Sales Supervisor, or Financial / Operations Principal, the CBOE will also require prompt written notice to the Exchange. CBOE rule 3.6A's restrictions on FINOPs would also be amended with changes corresponding to the new provisions of rule 9.4.

### 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.<sup>7</sup> In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposed rule change will provide CBOE with information that it needs to regulate its member firms. The Commission further notes that the proposed rules are similar to rules of other self-regulatory organizations.<sup>9</sup> Finally, the proposed rule change does not alter in any way the obligation of a CBOE member or member organization to oversee the operation of its business and supervise the performance of its

<sup>7</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>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See American Stock Exchange rule 342(b), National Association of Securities Dealers rule 3030, New York Stock Exchange rule 346(b), Pacific Exchange rule 1.26(d) and Philadelphia Stock Exchange rule 793.

associated persons, including any potential conflicts of interest involving any associated person, in a manner that assures compliance with the Act and rules and regulations thereunder, as well as applicable rules of the CBOE. To this end, the Commission notes that CBOE member firms will be obligated to review and approve in writing any outside business arrangements of their personnel.

Therefore, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended (File No. SR-CBOE-2003-02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47812; File No. SR-CME-2003-01]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Mercantile Exchange To Adopt, on a Permanent Basis, a Standard Under Which a Market Maker Can Qualify for Exclusion From CME's Margin Rules

May 7, 2003.

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 May 7, 2003, the Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.