

submissions should refer to SR-AMEX-2001-20 and should be submitted by June 5, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-12133 Filed 5-14-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44258; File No. SR-CBOE-2001-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Prohibition Against Members Functioning as Market Makers

May 4, 2001.

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 April 12, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 adopt a new Rule 6.8C, *Prohibition Against Members Functioning as Market-Makers*, which restricts the entry of certain option limit orders. The text of the proposed rule change is available at the Office of the Secretary, 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, Proposed Rule Change

###### 1. Purpose

The Exchange proposes to adopt new Rule 6.8C, *Prohibition Against Members Functioning as Market-Makers*, which will restrict the entry of certain option limit orders into the Exchange's electronic Order Routing System ("ORS"). The proposed new rule provides that member firms, acting as either principal or agent, may neither enter nor permit the entry of orders into ORS if the orders are limit orders for the account or accounts of the same beneficial owners and limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. In determining whether a beneficial owner effectively is operating as a market-maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.

The Exchange states that its business model depends upon Designated Primary Market-Makers ("DPMs") and market makers for competition and liquidity. To encourage participation by these market makers, the Exchange needs to limit the ability of members that are not DPMs or market makers to compete on preferential terms within its automated systems. In addition, because customers' orders are provided with certain benefits such as automatic execution, priority of bids and offers and firm quote guarantees, and customers should not be allowed to act as market makers. The proposed rule will prevent non-DPM/market maker members and their customers from

reaping the benefits of market making activities without any of the concomitant obligations, such as providing continuous quotations during all market conditions. The proposed rule is designed to prevent certain members and customers from obtaining an unfair advantage by acting as unregistered DPMs and market makers by virtue of their customer status. Permitting members (other than DPMs or market makers) or customers to enter multiple limit orders to such an extent that they are effectively acting as market makers in an option, while not requiring them to fulfill the obligations imposed upon registered market makers, would give such members and customers an inordinate advantage over other market participants.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

##### 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 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

The proposed rule change has been filed as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup> Because the foregoing rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does

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

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

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

<sup>3</sup> 17 CFR 240.19b(f)(6).

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 C.F.R. 240.19b-4(f)(6).

not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter times as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provide the Commission with notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become effective today.<sup>8</sup> The Commission has approved similar proposals filed by the other options exchange.<sup>9</sup> Approval of this proposal on an accelerated basis will enable the Exchange to compete on an equal basis with these other exchanges and thus is consistent with Section 6(b)(8) of the Act.<sup>10</sup>

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 furtherance 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 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

<sup>8</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> See Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001) (approving SR-Amex-01-03); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-2001-20 and should be submitted by June 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-12135 Filed 5-14-01; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44281; File No. SR-NASD-00-69]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Establish a New Registration Category: Limited Representative—Private Securities Offerings (Series 82)

May 8, 2001.

#### I. Introduction

On November 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "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 seeking to amend rule 1032 of the NASD to establish a new registration category, Limited Representative—Private Securities Offerings (Series 82). The proposed rule change was developed to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 ("GLBA"), which becomes effective on May 12, 2001.<sup>3</sup> NASD Regulation also proposed clerical changes to rule 1032, essentially

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 CFR 240.19b-4

<sup>3</sup> Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

replacing the word "described" for the word "prescribed." NASD Regulation filed Amendment No. 1 to the proposed rule change on February 28, 2001.<sup>4</sup> Amendment No. 1 replaces the proposed rule change in its entirety. On March 14, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.<sup>5</sup> Notice of the proposed rule change appeared in the **Federal Register** on March 28, 2001.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NASD Regulation is proposing to amend Rule 1032 of the NASD to implement Section 203 of GLBA. Section 203 adds subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA (*i.e.*, from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of "broker" and "dealer" under the Act and instead provides exclusions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (that is not a broker or dealer) where (a) the bank is not affiliated with a broker or dealer that is engaged in dealing, market

<sup>4</sup> See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 28, 2001 ("Amendment No. 1"). Amendment No. 1 was filed to address SEC staff comments and to make certain clarifications.

<sup>5</sup> See letter from Gary L. Goldholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 14, 2001 ("Amendment No. 2"). Amendment No. 2 was filed to address SEC staff comments and to make further clarifications.

<sup>6</sup> See Release No. 34-44091 (March 21, 2001), 66 FR 16964 (March 28, 2001).