

does not believe that the liquidation would disrupt the Company's portfolio for the remaining shareholders and states that the planned and longer term nature of the Repurchase would allow the Company appropriate time to plan for the necessary sale of portfolio securities.

Applicant's Legal Analysis

1. Section 23(c) of the Act prohibits a registered closed-end investment company from purchasing its own securities other than on a securities exchange or pursuant to a tender offer. Section 23(c)(3) also allows purchases to be made under such other circumstances as the Commission may permit by order for "the protection of investors to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased."

2. Applicant states that the Repurchase permits the Company to satisfy its contractual obligation to Agape and will have less of an effect on the market value of the common shares than registering the Shares for resale on the open market. Applicant also asserts that their terms of the Repurchase were developed in response to Agape's Registration Rights under the Purchase Agreement and were not influenced by Agape's status as an affiliated person of the Company.² Applicant also states that the Repurchase price will be one-half of one percent lower than NAV; thus there will be no dilution of the other shareholders' net interest in the Company. Applicant also states that because there will be no Repurchase transaction if the NAV per share exceeds market value per share, the price received by Agape will be no higher than the market price (the price that may be obtained by other shareholders that wish to sell their shares.) Applicant thus asserts that the Repurchase does not unfairly discriminate against the shareholders of the Company. Applicant also asserts that for the reasons discussed above, the Repurchase is in the best interests of the Company and its shareholders.

² Agape is an affiliated person of the Company because it owns more than 5% of the Company's voting securities. See section 2(a)(3) of the Act. Agape is presumed to control the Company by virtue of owning 25% or more of the Company's voting securities. See section 2(a)(9) of the Act. The Company states that Agape represented in the Purchase Agreement that it was not investing in the Company for the purpose of exercising or obtaining control of the Company and that it was not the intention of Agape to directly or indirectly exercise a controlling influence over the management or policies of the Company. Agape does not have a representative on the Company's Board.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-25131 Filed 9-18-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40440; File No. SR-CBOE-98-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 by Chicago Board Options Exchange, Inc. Relating to Floor Official Fining Authority

September 14, 1998.

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 May 28, 1998, the Chicago Board Options Exchange, Inc. ("CBOE") or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE filed Amendment No. 1 to its proposal with the Commission on July 8, 1998,³ Amendment No. 2 on August 27, 1998⁴ and Amendment No. 3 on September 9, 1998.⁵ The Commission is publishing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CBOE made the following changes to its proposal: (1) amended Exchange Rule 6.61 to consolidate summary fine authority under Exchange Rule 17.50; (2) clarified the meaning of the term "service personnel" as used in the proposal; (3) clarified that greater fines may be applicable for more serious behavior; (4) conformed the amount of the fines payable for failing to supervise a visitor and failing to abide by floor official determination or floor official request for information as stated in the text of the proposal with the amount of the fines identified in the proposed Regulatory Circular to Exchange members; (5) made minor technical changes to the language of the amended rules; and (6) clarified the Exchange's deletion of its use of the term "member organization" in the Exchange Rules. See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Gail Marshall-Smith, Special Counsel, Division of Market Regulation ("Division"), Commission, dated July 7, 1998 ("Amendment No. 1").

⁴ In Amendment No. 2, the CBOE made technical changes to the language of the amended rules. See Letter from Debora E. Barnes, Senior Attorney, CBOE, to Terri L. Evans, Attorney, Division, Commission, dated August 26, 1998 ("Amendment No. 2").

⁵ In Amendment No. 3, the CBOE made technical changes to the Exchange's proposed rule language and concurred with the recommendations made by the Commission regarding the expansion of the discussion on the proposed rule change. See Letter

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 Exchange proposes to modify certain Exchange rules and a related regulatory circular to consolidate most Floor Official fining authority governed by Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations ("Summary Fine Rule"), under one regulatory circular. The text of the proposed rule change and regulatory circular follows: new text is italicized; deleted text is bracketed.

CHAPTER I—Definitions

Definitions

RULE 1.1. When used in these Rules, unless the context otherwise requires:

(a) through (jj) No Change.

Joint Venture Participant

(kk) The term "joint venture participant" means a member or non-member of the Exchange who is qualified to execute in person transactions in joint venture contracts in a trading crowd on the floor of the Exchange. A non-member joint venture participant shall be treated as a member for purposes of Rules 6.7 and 6.20(a), (b), [and] (c), and (d) and Rule 6.20 Interpretations and Policies .01 and .04 (iv), (v), and (vi) unless otherwise specified.

(ll) through (ww) No Change.

. . . Interpretations and Policies

.01 No Change.

* * * * *

CHAPTER VI—Doing Business on the Exchange Floor

* * * * *

Section B: Member Activities on the Floor

* * * * *

Admission to and Conduct on the Trading Floor; Member Education

RULE 6.20. (a) Admission to *Trading Floor*. Unless otherwise provided in the Rules, no one but a member or an Order Book Official designated by the Exchange pursuant to Rule 7.3 shall make any transaction on the floor of the Exchange. Admission to the *floor* [Floor] shall be limited to members, employees of the Exchange, clerks employed by members and registered with the

from Debora E. Barnes, Senior Attorney, CBOE, to Terri L. Evans, Attorney, Division, Commission, dated September 8, 1998.

Exchange, service personnel and Exchange visitors authorized admission to the floor pursuant to Exchange policy, and such other persons permitted admission to the floor by the President of the Exchange [as may be provided by resolution of the Board].

(b) Conduct on the Exchange. Members and persons employed by or associated with any member, while on any premises of the Exchange, including the trading floor of the Exchange, shall not engage in conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; (iii) inconsistent with the ordinary and efficient conduct of business; or (iv) detrimental to the safety or welfare of any other person.

(c) *Fines Imposed by Floor Officials.* The Exchange shall periodically issue fine schedules setting forth which violations of the Exchange's trading conduct and decorum policies are subject to fines pursuant to Rule 17.50 and the specific dollar amounts of such fines. Floor Officials may (i) fine members and persons employed by or associated with members pursuant to Rule 17.50 for trading conduct and decorum violations which are subject to fine under such fine schedules, [violations of this rule and/or may] (ii) direct members and [such other] persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules [rules] and accepted and established standards of trading conduct and decorum and/or (iii) refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. [A member or person employed by or associated with a member who is adversely affected by a determination made under this rule may obtain a review thereof in accordance with the provisions of Chapter XIX, except as otherwise provided in Rule 17.50.] Any action taken by Floor Officials under this paragraph (c) [hereunder] shall not preclude additional [further] disciplinary action by the Business Conduct Committee under Chapter XVII of the Rules [, except as otherwise provided in Rule 17.50]. Any application or interpretation of Rules, and any decision to impose a fine under this paragraph (c) [hereunder], shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.

(d)[(c)] Clerks of Members. While on the trading floor, clerks shall display at all times the badge(s) supplied to them by the Exchange. Any Market-Maker clerk who writes up an option or stock order must give his employer a copy of that order before it is delivered; the employer must retain the copy on his person until it is executed. A clerk receiving a phone order must initial, must mark as opening or closing, and must time-stamp the order. A clerk shall remain at a booth assigned to his employer or assigned to his employer's clearing firm unless he is (i)[(1)] entering or leaving the trading floor, (ii)[(2)] transmitting or checking the status of an order or reporting a fill, (iii)[(3)] standing in the same crowd as his employer who is a Market-Maker or Floor Broker, (iv)[(4)] supervising his firm's clerks if he is a floor manager or (v)[(5)] acting as a clerk for an order service firm. Only order service firm clerks and Market-Maker or Floor-Broker clerks may stand in or near a trading crowd; in the latter case, the Market-Maker or Floor Broker must be present in the same trading crowd. Quote terminals on the trading floor (except those located in booths) may not be used by a clerk unless his employer is a Market-Maker or Floor Broker who is standing near the quote terminal.

(e)[(d)] Educational Classes. Members and persons associated with members are required to attend such educational classes as the Exchange may require from time to time. Failure to attend Exchange mandated continuing educational classes may subject members and persons associated with members to sanctions pursuant to the Exchange's Minor Rule Violation Plan provided in Exchange Rule 17.50. Any action taken by Floor Officials hereunder shall not preclude further disciplinary action by the Business Conduct Committee under Chapter XVII of the Rules[, except as otherwise provided in Rule 17.50].

. . . Interpretations and Policies:

.01 Only those members who have been approved to perform a floor function are authorized to enter into transactions on the floor. Such members include Floor Brokers who are registered pursuant to Rule 6.71, Board Brokers who are registered pursuant to Rules 7.2 and 7.3, and Market-Makers registered pursuant to Rules 8.2 and 8.3. While on the floor such floor members shall at all times display a floor member's badge.

.02 Order Book Officials may effect transactions on the floor only in the classes of option contracts to which they

have been assigned and only in their capacity as Order Book Officials.

.03 Rule 3.21 provides that a Government securities options permit holder is entitled to enter into principal transactions as a Market-Maker and agency transactions as a Floor Broker in Government securities options settled by physical delivery on the floor of the Exchange until his permit expires.

.04 Activities which may violate the provisions of Rule 6.20(b) include, but are not limited to, the following:

(i) Effecting or attempting to effect a transaction with no public outcry in violation of Rule 6.43 or 6.74;

(ii) Failure of a Market-Maker to respond to a request for a market by an Order Book Official pursuant to Rule 7.5;

(iii) Failure of a Market-Maker to bid or offer within the ranges specified by Rule 8.7(b);

(iv) Failure of a member or an associated person of a member in a supervisory capacity [member organization] to adequately supervise a person employed by or associated with such member [or member organization] to ensure that person's compliance with the provisions of Exchange Rules 6.20(a), (b), [and] (c), and (d);

(v) Failure to abide by a determination of Floor Officials;

(vi) Refusal to provide information requested by a Floor Official acting in his official capacity; and

(vii) Failure to abide by the provisions of Rule 8.51.

.05 Two Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (i) Rule 6.43 (manner of bidding and offering), (ii) Rule 6.45 (priority of bids and offers), (iii) Rule 6.46 (transactions outside the book's last quoted range), (iv) Rule 6.47 (priority on split price transactions), or (v) Rule 8.51 (trading crowd firm disseminated market quotes).

.06 Deleted February 5, 1986.

.07 Non-member joint venture participants are subject to the provisions of Rule 6.20(a), (b), [and] (c), and (d) and Rule 6.20 Interpretation and Policy [Interpretations and Policies] .01 and are subject to fines under Rule 17.50 pursuant to Rule 6.20(c) for violations of Rule 6.20, and Rule 6.20 Interpretations and Policies .04(iv), (v), and (vi). A non-member joint venture participant against whom a fine is imposed under Rule 17.50 may contest the fine in accordance with the appeal provisions of Rule 17.50.

.08 Deleted December 2, 1997.

.09 Members of the appropriate Market Performance Committee may

perform the functions of a Floor Official for the purpose of enforcing trading conduct policies, including but not limited to, enforcing policies and acting pursuant to rules related to the Retail Automatic Execution System, fast markets, and the firm quote requirement of Rule 8.51(a).

* * * * *

Section C: Trading Practices and Procedures

* * * * *

Reporting Duties

RULE 6.51.

(a) through (d) No Change.

. . . Interpretations and Policies:

.01 The Exchange has established the following procedure for reporting transactions pursuant to Rule 6.51(a) and (b).

For each transaction on the Exchange both the buyer and seller shall immediately record on a card or ticket, or enter in an electronic data storage medium acceptable to the Exchange, his assigned broker initial code and his clearing firm (if a Market-Maker), the symbol of the underlying security, the type, expiration month and exercise price of the option contract, the transaction price, the number of contract units comprising the transactions, the time of the transaction obtained from a source designated by the Exchange, the name of the contra clearing firm member and the assigned broker initial code of the contra member. Such a record shall constitute the "transaction record." The transaction record for any agency order shall also include the account origin code, as set forth in Interpretation .02 below. The seller in each transaction, or the buyer if designated by the Exchange, shall also immediately place a paper form copy of the transaction record in the price reporting belt provided at the station or, alternatively shall provide the information required for price reporting through an electronic data transmission link approved by the Exchange. Then, the buyer and seller in each transaction shall, within the established time frames, provide the transaction record to the member for whom the transaction was executed and/or the clearing member that will clear the transaction. A member receiving a report of execution from another member shall immediately forward the report to the clearing member that will clear the transaction.

Before submitting the transaction record information for price reporting purposes in the manner prescribed above, the member shall use his best

efforts to make sure that the Order Book Official acting in option contracts of the class involved, or the Order Book Official's clerk, is aware of the transaction and its price. A member shall also submit the transaction record information for price reporting purposes in the manner prescribed above whenever the transaction represents the partial execution of a larger order.

Any floor member failing to report a transaction in accordance with Rule 6.51(a) or (b) and this interpretation shall be subject to *discipline* [being fined by the appropriate Floor Procedure Committee or disciplined] by the Business Conduct Committee.

.02 No Change.

* * * * *

Reconciliation and Resolution of Unmatched Trades

Rule 6.61

No Change.

* * * Interpretations and Policies:

.01-.04 No Change.

.05 With regard to transactions in index options and in any class of options which will trade ex-dividend or ex-distribution the following day:

(a)-(c) No Change.

(d) Any member of member firm who fails to observe the above procedures will be responsible for any liability resulting from an unmatched transaction which should have matched prior to Second Pass processing. [The Exchange may establish a schedule of fines. In addition, repeated or aggravated failure to comply with Interpretation and Policy .05 will be referred to the Business Conduct Committee.]

.06-.07 No Change.

* * * * *

CHAPTER VIII—Market-makers, Trading Crowds and Modified Trading Systems

* * * * *

Section B: Trading Crowds

* * * * *

Trading Crowd Firm Disseminated Market Quotes

RULES 8.51.

(a) through (b) No Change.

. . . Interpretations and Policies:

.01-.04 No Change.

.05 *Floor Officials may, as provided for under Rules 6.20(c) and 17.50(g)(6),* [Pursuant to Rule 6.20(b) and Interpretation and Policies .04 thereunder, Floor Officials of the appropriate Market Performance Committee and the appropriate Floor

Procedure Committee, may] impose a fine on members of the trading crowd for violations of this Rule and its Interpretations and Policies.

.06-.08 No Change.

* * * * *

CHAPTER XVII—Discipline

Imposition of Fines for Minor Rule Violations

RULE 17.50.

(a) through (g)(5) No Change.

(g)(6) Violations of Trading Conduct and Decorum Policies. (Rule 6.20)

The Exchange's trading conduct and decorum policies shall be distributed to the membership periodically and shall set forth the specific dollar amounts that may be imposed as a fine hereunder with respect to any violations of those policies. *If warranted under the circumstances in the view of two floor officials, the fine authorized under those policies for a second or third offense may be imposed for a first offense and the fine authorized for a third offense may be imposed for a second offense.* [The maximum fine authorized under those policies—this is, for violations subsequent to second offense—may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Officials Committee.]

(g)(7) No Change.

* * * Interpretation and Policies:

.01-.05 No Change.

* * * * *

CHAPTER XIX—Hearings and Review

Scope of Chapter

RULE 19.1. No Change.

* * * Interpretations and Policies:

.01 No Change.

.02 For the purposes of this Chapter "persons aggrieved by Exchange action" may include non-member joint venture participants only *as provided pursuant to Rule 6.20, Interpretation and Policy .07 and Rule 17.50(d)* [in connection with Exchange taken pursuant to Rule 6.20].

* * * * *

Regulatory Circular *RG98-* (RG92-14, Revised) (RG95-37, Revised)

Date: , 1998 [April 11, 1995]

To: All Exchange Members and Personnel

From: Floor Officials Committee

Re: Violations of Trading Conduct and Decorum Policies

The purpose of this circular is to advise members and their personnel of the provisions of Exchange Rule 17.50, Imposition of Fines for Minor Rule

Violations, as they related to violations of the Exchange's trading conduct and decorum policies under Exchange Rule 6.20, Admission to and Conduct on the Trading Floor.

(1) The Rule. Rule 17.50(g)(6) provides for the imposition of fines for violations of the Exchange's trading conduct and decorum policies under Rule 6.20. The following schedule

identifies certain conduct deemed to violate [violative of] those policies and lists the applicable fines that may be imposed for such violations by the Exchange under Rule 17.50(g)(6). *Please be advised that Rule 17.50(g)(6) enables the Exchange, if warranted under the circumstances, to impose for a first offense the fine authorized for a second or third offense and to impose for a*

second offense the fine authorized for a third offense. [Please be advised that Rule 17.50(g)(6) enables the Exchange to impose the maximum fine authorized under those policies—that is, the fine authorized for subsequent offenses—in connection with a first or second offense, if warranted under the circumstances.]

FINE SCHEDULE FOR TRADING CONDUCT AND DECORUM VIOLATIONS

<i>Number of Violations in Any Twelve Month Period [Violation Within One Calendar Year]</i>	1st Offense	2nd Offense	Subsequent offenses
Abusive language	\$100	\$250	\$500
Abusing Exchange Property:			
—No property damage	100	250	500
—Property damage (plus repair or replacement costs)	500	[750] 1,000	[1,000] 2,000
Book Priority Violation	400	800	1,200
Disruptive Announcement of Stock Print	200	400	500
Dress Code Violation	\$50	\$250	\$500
Failure to Display ID	50	250	500
Food or Drink on Floor	250	500	1,000
Enabling/Assisting Non-Member or Barred/Suspended Member to Gain Improper Access to Floor	500	1,000	2,000
Enabling/Assisting Member or Associated Person to Gain Improper Access to Floor	100	250	500
Gaining Improper Access to Floor	100	250	500
Improper Use of Runners' Aisle	25	50	100
Smoking in Unauthorized Areas	50	250	500
Trading in Aisle	250	500	1,000
Physical Violence:			
—Shoving	500	1,500	2,500
—Fighting	1,500	3,000	5,000
Running	100	250	500
Unbusinesslike Conduct	[\$]250	[\$]500	[\$]1,000
Impermissible Use of [Using] Member Phones	50	150	300
Visitor Badge Returned Late or Not Returned	(¹)	25	[25] 50
Failure to Attend Exchange Mandated Education Training	500	750	1000
Failure to Supervise a Visitor	50	100	250
Effecting or Attempting to Effect Transaction with No Public Outcry	500	1,000	2,000
Failure of Market-Maker to Respond to Request for Market by Order Book Official	500	1,000	2,000
Failure to Bid or Offer within Ranges Specified by Rule 8.7(b)	500	1,000	2,000
Failure to Abide by Floor Official Determination or Floor Official Request for Information	1,000	2,500	5,000
Violation of Rule 8.51 in an Option Class Other than OEX or DJX	(²)	(²)	(²)

¹ Warning.

² Any amount up to 5,000.

(2) Floor Officials. Fines under Rule 17.50(g)(6) may be imposed upon the determination of two Floor Officials that the person fined has committed any of the trading conduct and decorum violations enumerated in the schedule above [violated Rule 6.20]. Any application or interpretation of the Rules relating to conduct on Exchange premises shall be agreed upon by at least two Floor Officials. Floor Officials shall file with the Exchange a written report of any action taken pursuant to authority specifically granted them by the Rules and of any interpretation of the Rules.

(3) Persons Subject to Fine. The Exchange may impose the preceding fines against either or both of the following: (a) the individual responsible

for the subject violation and/or (b) if such individual is employed by or associated with a member [or member organization], the member and/or any supervisory personnel of the member [member organization] that failed to adequately supervise such individual to ensure compliance with Exchange rules. Any member or supervisory person [member organization] who is fined more than one (1) time in any twelve month period [calendar year] for failure to supervise shall be subject to the fines specified above for second offenses and subsequent offenses, regardless of the number of offenses committed by the individual subject to fine for the underlying violation.

(4) Right to Contest Fines. Any person against whom a fine is imposed

pursuant to Rule 17.50(g)(6) may contest that fine. Specifically, fines imposed under Rule 17.50(g)(6) that do not exceed \$2,500 may be contested before the Appeals Committee in accordance with the provisions of Rule 17.50(d), and fines imposed under Rule 17.50(g)(6) that exceed \$2,500 may be contested before the Business Conduct Committee in accordance with the provisions of Rule 71.50(c). *Persons* [Please be advised that persons] wishing to contest such fines must comply with the deadlines and all other requirements set forth in Rule 17.50(d) or Rule 17.50(c), as applicable. *Please be advised that if a fine imposed under Rule 17.50(g)(6) is contested and the reviewing body finds that the person fined committed the rule violation(s)*

alleged, the reviewing body may impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules, including but not limited to a higher fine than the fine imposed pursuant to Rule 17.50(g)(6). In addition, if a person contests a fine imposed under Rule 17.50(g)(6) and the fine is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100 if the reviewing body's determination was reached without a hearing, or in the amount of \$300 if a hearing was conducted.

(5) Additional Floor Official Action. In addition to, or instead of, issuing a fine pursuant to Rule 17.50(g)(6), Rule 6.20(c) provides that Floor Officials may direct members and their associated persons to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. Furthermore, any action taken by Floor Officials under Rules 17.50(g)(6) and 6.20(c) does not preclude additional disciplinary action by the Business Conduct Committee under Chapter XVII.

Any questions in connection with this circular should be directed to Andrew Spiwak of the Legal Department at (312) 786-7483 [Legal Department] or to Gregory Rich of the Trading Floor Liaison Group at (312) 786-7847. (RG92-14 and RG95-37, Revised)

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 statutory 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

The Exchange proposes to modify Exchange Rule 6.20, Admission to and conduct on the Trading floor, and certain other Exchange rules to

consolidate most Floor Official fining authority governed by the Summary Fine Rule under one regulatory circular.⁶ The CBOE also proposes to modify its regulatory circular pertaining to the administration and enforcement of paragraph (g)(6) of the Summary fine Rule, as it relates to minor rule violations applicable to trading conduct and decorum policies ("Trading Conduct and Decorum Circular").

The purpose of the CBOE's summary fine plan is to provide a mechanism whereby certain minor violations of Exchange rules can be resolved fairly, effectively and expeditiously. Because the minor rule violations subject to summary fines are easily ascertainable by floor officials, they are suitable for summary fine treatment. The proposed changes are meant to clarify the categories of behavior subject to summary fines and clarify the authority of floor officials to summarily fine under the Summary Fine Rule.

Currently, rule 6.20 provides that admission to the Exchange's trading floor is limited to members, employees of the Exchange, clerks employed by members and registered with the Exchange, and such other persons as may be provided by resolution of the Board. The Exchange is proposing to amend Rule 6.20 to clarify that Exchange visitors and service personnel, including but not limited to, electricians, building maintenance engineers, and computer repair support staff, are authorized admission to the trading floor pursuant to and in accordance with Exchange policy concerning admission to the trading floor.⁷ In addition, the amendment to Rule 6.20 grants the President, rather than the Board, the authority to allow other people admission to the floor, because admission to the floor is primarily an administrative issue and the President is generally able to act more expeditiously than the Board which generally must convene a meeting to take action.

The summary fines for Rule 6.20 violations are set forth in the Trading Conduct and Decorum Circular. Currently, if a member is fined for a Rule 6.20 violation more than once in a calendar year, that individual will then be subject to increased summary fines for second or subsequent offenses of that kind in that calendar year. The Exchange proposes to amend the Trading Conduct and Decorum Circular

to provide that summary fines for second or subsequent offenses will be assessed on a twelve-month rolling period, rather than on a calendar year basis. This Circular is also being amended to allow for the fining of any supervisory personnel of an associated person of a member who failed to adequately supervise the associated person. The Circular and Rule 17.50 also are being amended to clarify that the Exchange, if warranted under the circumstances, may impose a fine for a first offense equal to the fine authorized for a second or third offense and to impose for a second offense the fine authorized for a third offense. This permits the Exchange to impose greater fines for more serious behavior. Currently, floor officials only have the ability to impose a fine authorized for a third offense for a first or second offense, which has restricted the ability of floor officials to fine in a manner corresponding to the circumstances.⁸

The Exchange is also amending the Trading Conduct and Decorum Circular to add the following summary fine categories: Enabling a barred or suspended member to gain improper access to the floor, with fines of \$500 for a first violation, \$1000 for a second violation, and \$2000 for a third violation; Enabling or assisting a member or associated person to gain improper access to the floor, with fines of \$100 for a first violation, \$250 for a second violation, and \$500 for a third violation; Gaining improper access to the floor, with fines of \$100 for a first violation, \$250 for a second violation, and \$500 for a third violation; Impermissible use of member phones, with fines of \$50 for a first violation, \$150 for a second violation, and \$300 for a third violation; Visitor badge returned late, with a warning for the first violation, a \$25 fine for a second violation, and a \$50 fine for a third violation; and Failure to supervise a visitor, with fines of \$50 for a first violation, \$100 for a second violation, and \$250 for a third violation.

Additionally, the Exchange is amending the Trading Conduct and Decorum Circular to specify fine amounts for the following conduct: Effecting or attempting to effect transactions with no public outcry, with fines of \$500 for a first violation, \$1000 for a second violation, and \$2000 for a third violation; Failure of a market-maker to respond to a request for the

⁶The Exchange has issued separate circulars setting forth fine schedules for violations of Rule 8.51 with respect to OEX and DJX options. These circulars were approved by the Commission in SR-CBOE 96-31 and SR-CBOE 97-45.

⁷ See Amendment No. 1, *supra* note 3.

⁸Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998. See Amendment No. 3, *supra* note 5.

market by order book official, with fines of \$500 for a first violation, \$1000 for a second violation, and \$2000 for a third violation; Failure to bid or offer within ranges specified by Rule 8.7(b), with fines of \$500 for a first violation, \$1000 for a second violation, and \$2000 for a third violation; Failure to abide by floor official determination or floor official request for information, with fines of \$1000 for a first violation, \$2500 for a second violation, and \$5000 for a third violation; and Violation of Rule 8.51 in an option class other than OEX or DJX, with fines of any amount up to \$5000 for first, second and third violations. Floor Officials currently have fining authority for this conduct under Rule 6.20.04, but specific fine amounts for the conduct are not set forth in the Trading Conduct and Decorum Circular. Including this conduct in the Circular will clarify that floor official fines for this conduct are imposed under the Summary Fine Rule.

The Exchange is also proposing to change some of the summary fine amounts in the Trading Conduct and Decorum Circular. The current fine for property damage is \$500 for the first violation, \$750 for the second violation and \$1000 for the third violation. The Exchange is proposing to increase the latter two fines to \$1000 for a second violation and \$2000 for a third violation.

The Exchange also is proposing to amend Rule 6.20(c) to clarify that the Exchange has the authority to direct members and persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules.⁹ In addition, because the Exchange is consolidating all summary fine procedures under the Summary Fine Rule, the Exchange is proposing to amend Rule 6.20(c) by deleting the reference to Chapter XIX and its appeal procedures because the appeal procedures for summary fines are set forth in the Summary Fine Rule.

The Exchange also proposes to amend Exchange Rule 6.51, Interpretation and Policy .01, by amending the final paragraph to delete the reference to the Floor Procedure Committee. This change is being proposed to conform the Exchange's rule language with the Exchange's current practice. The Floor Procedure Committee is no longer involved in fining floor members who violate Rule 6.51(a) or (b); instead

members are fined pursuant to the Summary Fine Rule.¹⁰

The proposed rule change also amends Rule 6.61, Interpretation and Policy .05(d) by deleting the last two sentences. The Exchange is deleting this language because it is attempting to consolidate summary fine authority under Exchange Rule 17.50. In addition, a member's failure to observe the procedures referenced in Interpretation and Policy .05 is subject to the disciplinary authority of the Business Conduct Committee under Chapter XVII of the Exchange's Rules, therefore making the cross-reference in Interpretation and Policy .05 unnecessary.¹¹

The Exchange is proposing that Rule 8.51 ("Firm Quote Rule") be revised as well, to provide that Floor Officials may fine members of trading crowds under the Summary Fine Rule for violations of the Firm Quote Rule.¹² This change is being proposed to consolidate all of the minor rule violation authority of Floor Officials under the Summary Fine Rule, rather than having the Firm Quote Rule refer to Rule 6.20, which then refers back to the Summary Fine Rule. This proposed rule change also makes certain changes to clarify and incorporate Rule 6.20, the Summary Fine Rule, and the Trading Conduct and Decorum Circular into other Exchange Rules.¹³

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act¹⁴ in that it is designed to clarify and enhance the Exchange's summary fine plan as applied to trading conduct and decorum policies, thereby promoting just and equitable principles of trade and protecting investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

¹⁰ *Id.*

¹¹ See Amendment No. 1, *supra* note 3.

¹² The Exchange has issued separate circulars setting forth fine schedules for violations of Rule 8.51 with respect to OEX and DJX options. These circulars were approved by the Commission in SR-CBOE 96-31 and SR-CBOE-97-45.

¹³ For example, in Amendment No. 1, the Exchange notes that it has deleted the reference to member organizations in certain of the rules proposed to be amended by the rule filing that also refer to members, because Section 1.1 of the Exchange Constitution defines the term "member" to include either an individual member or a member organization.

¹⁴ 15 U.S.C. 78f(b)(5).

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 date of publication of this notice in the **Federal Register** or 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 self-regulatory organization 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, N.W., Washington, D.C. 20549. 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 in Washington D.C. 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 number SR-CBOE-98-22 and should be submitted by October 13, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-25164 Filed 9-18-98; 8:45 am]

BILLING CODE 8010-01-M

⁹ Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998. See Amendment No. 3, *supra* note 5.

¹⁵ 17 CFR 200.30-3(a)(12).