

the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.<sup>8</sup> Another provision in this section authorizes the Commission to prescribe rules to assure that all persons may obtain this market data on terms that are "not unreasonably discriminatory."

Based on these standards, the Commission requests comment on whether the tiered fee structure applicable to users is unreasonably discriminatory.

1. The usage-based fee is structured as a fee per user with decreases for larger numbers of users. Will this tiered fee structure have an effect on competition among broker-dealers?

2. Will these volume discounts inure to the benefit of retail investors equally regardless of the broker-dealer they choose?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 CTA. All submissions should refer to the file number in the caption above and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41558; File No. SR-CBOE-99-21]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Changes to the Firm Quote Rule

June 24, 1999.

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 27, 1999, the Chicago Board Options Exchange, Inc. ("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 the Exchange. 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

CBOE proposes to amend Rule 8.51, Trading Crowd Firm Disseminated Market Quotes, to expand the categories of orders entitled to firm quote treatment and to specify to what extent multiple orders entered by the same beneficial owner at the same time will be entitled to firm quote treatment. 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 Exchange 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 Exchange 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 amend Rule 8.51 to expand the categories of orders entitled to firm quote protection and to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection.

Currently, Rule 8.51(a) states that "non-broker-dealer customer" orders up to the specified size (currently 10 contracts) are entitled to be executed at the offer (bid) which is displayed when a buy (sell) customer reaches the trading station where the particular option class is located for trading.<sup>3</sup> The Exchange is proposing to expand the category of orders entitled to this protection such that, with one exception, all orders would be entitled to the firm quote treatment under Rule 8.51(a). The firm quote requirement would not apply to orders of individuals who trade in the account of a market-maker or specialist on the Exchange or on another exchange, which account is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Act.<sup>4</sup> This exception would exclude not only market-maker accounts but also customer accounts of market-makers or specialists. In other words, the proposal would apply to orders of broker-dealers (other than those acting as market-makers) regardless of whether they are agency or proprietary orders. The appropriate Floor Procedure Committee would have the authority to determine not to extend firm quote treatment to broker-dealer orders in a particular class of options under its jurisdiction.

In proposing this change, the Exchange believes that extending the firm quote treatment to broker-dealer orders will provide an incentive to broker-dealers to send their orders to the Exchange because they will be assured that their order will be executed at the

<sup>3</sup>But see Securities Exchange Act Release No. 40957 (January 20, 1999), 64 FR 4485 (January 28, 1999) (File No. SR-CBOE-98-53, proposing to raise the number of contracts guaranteed under the firm quote rule to the RAES contract limit).

<sup>4</sup>Section 7(c)(2) of the Act specifies those categories of persons that are exempt from the requirements of Regulation T with respect to the arrangement, extension or maintenance of credit to finance securities transactions. Among those persons exempted are members of national securities exchanges or registered broker-dealers who arrange or maintain credit to finance their activities as market makers.

<sup>8</sup> 15 U.S.C. 78k-1(a)(1)(C)(i) and (ii).

<sup>9</sup> 17 CFR 200.30-3(a)(27).

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

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

displayed bid or offer, as appropriate. Currently, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. This "trade or fade" policy is codified in paragraph (b) of Rule 8.51.

The Exchange is also proposing to amend Rule 8.51 to deny the firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and that are represented at the trading station at approximately the same time and that cumulatively exceed the firm quote requirement for that particular class of options. For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to the floor broker in a crowd to by ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another. Under the proposed new paragraph (a)(3) of Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change that market pursuant to the terms of the "trade or fade" policy set forth in paragraph (b) of the Rule.

The Exchange believes that customers or broker-dealers can attempt to circumvent the limits of the firm quote protection by submitting orders at the same time that are in many respects economically very similar. If the market-makers in a crowd were required to fill each of these orders at the displayed quotes without the possibility of refreshing those quotes they would essentially be responsible for honoring the displayed quotes in the crowd at a level beyond the intended protection and would be subjected to undue risk. The potential risk will be even greater than it is today with the expansion in the category of orders that will be entitled to firm quote protection. In addition, the potential risk will be increased if the firm quote limit were to be raised. The Exchange recently submitted a filing with the Commission proposing to expand the allowable firm quote limit up to 50 contracts. The Exchange believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time is the best way to ensure the

viability of the expansion of the firm quote protection that the Exchange has proposed in both this filing (with respect to an expansion in the category of orders entitled to the firm quote guarantee) and in SR-CBOE-98-53 (with respect to an expansion in the allowable firm quote contract limit).

The Exchange also proposes to amend paragraph (b) of Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders now subject to the firm quote guarantee.

## 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 Act<sup>5</sup> 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*

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

### *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 the 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.,

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

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 at 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-99-21 and should be submitted by July 27, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-41571; File No. SR-NASD-99-22)

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Limited Usage Service Fees

June 28, 1999.

On April 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 to amend NASD Rule 7010 to eliminate its Limited Usage Service Fee.

The proposed rule change was published for comment in the **Federal Register** on May 28, 1999.<sup>3</sup> The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to amend NASD Rule 7010 to eliminate its Limited Usage

<sup>6</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> Securities Exchange Act Release No. 41432 (May 20, 1999), 64 FR 29075.