

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41900; File No. SR-CBOE-99-28]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Exchange Rule 9.21 and Issuing a Regulatory Circular To Interpret Rules Relating to Customer Communications

September 22, 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 August 25, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") 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.<sup>3</sup> 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 Exchange Rule 9.21, *Communications to Customers*, and to issue a Regulatory Circular to its membership setting forth a clarifying interpretation to Exchange Rule 9.21, which governs communications from member firms to customers or members of the public. The text of the rule change and the Regulatory Circular are 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

Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. In addition, the Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines").<sup>4</sup> The Guidelines explain the customer communications rules of the options exchanges and the interpretations of these rules.

The Exchange proposes to amend Exchange Rule 9.21 and issue a Regulatory Circular to formally install the clarifying interpretation concerning the manner in which a member or member organization may satisfy the requirement of Exchange Rule 9.21, Interpretations and Policies .02 and .03(v), which currently require that the name and address of a person from whom an Options Disclosure Document ("ODD") may be obtained be disclosed on Advertisements and Educational Materials. The Exchange believes that, given the varied marketing programs that members and member organizations utilize, the existing requirement unnecessarily excludes other reasonable methods for request an ODD. To allow flexibility without diminishing the effectiveness of the disclosure requirement, the Exchange is proposing that other reasonably specific disclosures about how to obtain an ODD be deemed to satisfy the requirements of Rule 9.21, Interpretations and Policies .02 and .03(v). Examples of alternative means of disclosure may include the use of one or more toll-free telephone numbers or directing existing clients to contact their registered representative. A member or member organization may utilize an internet address; however, such an address must be accompanied by either a telephone number or address for use by those investors who do not have access to the internet. A member or member organization may choose to

continue to identify the name and address of a person from whom an ODD may be obtained.

###### 2. Statutory Basis

The amendment to Exchange Rule 9.21 and the Regulatory Circular interpretations of Exchange Rule 9.21 are consistent with Section 6(b) of the Act<sup>5</sup> in general and further the objectives of Section 6(b)(5)<sup>6</sup> in particular in that they are designed to promote just and equitable principles of trade and to protect 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

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>7</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>8</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 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.<sup>9</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of

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

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

<sup>3</sup> The CBOE originally submitted the proposal on June 18, 1999. On August 25 1999, the CBOE submitted a letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes to amend Exchange Rule 9.21 to provide member firms with notice on how these firms can comply with the requirement of providing customers or members of the public with the current options disclosure document(s). Because this filing was filed pursuant to Section 19(b)(3)(A) of the Act, it must be complete at the time it is filed. Therefore, the date of filing of Amendment No. 1 is the date of the filing of the proposal.

<sup>4</sup> Securities Exchange Act Release No. 29682 (Sept. 13, 1991), 56 FR 47973 (Sept. 23, 1991) (File No. SR-CBOE-90-27).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</sup> In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-28 and should be submitted by October 21, 1999.

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. 34-41910; File No. SR-MBSCC-99-07]

### Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Modifying Rules Regarding Year 2000

September 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 20, 1999, MBS Clearing Corporation ("MBSCC") 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 primarily by MBSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, MBSCC will not activate any new or additional clearing participant accounts or electronic pool notification ("EPN") participant accounts (other than updating EPN subaccount information) or provide any new or additional services to clearing participants or EPN

participants and will freeze all nonemergency code releases after November 30, 1999, through January 26, 2000, which is the completion date of the first settlement cycle in the Year 2000, or such later date as MBSCC reasonably determines.

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

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

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

The proposed rule change provides that MBSCC will not activate any new or additional clearing participant accounts or EPN participant accounts (other than updating EPN subaccount information) or provide any new or additional services to clearing participants or EPN participants and will freeze all nonemergency code release after November 30, 1999, through January 26, 2000, which is the completion date of the first settlement cycle in the Year 2000, or such later date as MBSCC reasonably determines.<sup>3</sup>

MBSCC believes that continuing to activate new or additional participant accounts (other than updating EPN subaccount information) or to provide new or additional services to participants or to implement nonemergency code release after November 30, 1999, could potentially be disruptive to the rest of its Year 2000 efforts. Accordingly, MBSCC believes that the proposed rule change will facilitate a smooth Year 2000 transition.

MBSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) and the Act<sup>4</sup> which requires that the rules of a clearing agency be designed to

promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

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

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed modifications to MBSCC's Year 2000 rules will permit MBSCC sufficient time before year end to complete its Year 2000 preparations. As a result, MBSCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

MBSCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow MBSCC to better prepare for a smooth Year 2000 transition.

#### 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. 20549-0609. Copies of the submission, all subsequent

<sup>2</sup> The Commission has modified the text of the summaries prepared by MBSCC.

<sup>3</sup> The proposed rule change modified Addendum A of MBSCC's rules regarding mandatory Year 2000 testing. See Securities Exchange Act Release No. 40889 (January 6, 1999), 64 FR 2691.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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