

the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trusts are not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trusts will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Trust will disclose in its prospectus that (a) Shares of such Trust may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Trust and the interests of Qualified Plans investing in such Trust may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e-2 and rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Trusts and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Trust such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials, and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants

under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trusts will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Plan executes an agreement with the relevant Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-27730 Filed 10-22-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 25, 1999.

Open meetings will be held on Wednesday, October 27, 1999 at 10 a.m., and at 2 p.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 10 a.m., will be:

The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce. For further information, contact Sara P. Crovitz at (202) 942-0950.

The subject matter of the open meeting scheduled for Wednesday, October 27, 1999, at 2 p.m., will be:

Consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee. For further information, contact Donald J. Gannon at (202) 942-4400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99-27861 Filed 10-21-99; 11:54 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-4206; File No. SR-CBOE-99-43]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. To amend Its Constitution Pertaining to Corporate Governance

October 18, 1999.

I. Introduction

On August 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain provisions of its constitution pertaining to the governance of the Exchange. The proposed rule change was published in the **Federal Register** on September 7,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

1999.³ On September 24, 1999, the Exchange submitted an amendment to the proposed rule change.⁴ On September 28, 1999, the Exchange submitted a second amendment to the proposed rule change.⁵ The Exchange also submitted an amendment on October 15, 1999.⁶ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change and approves on an accelerated basis and solicits comment on Amendment Nos. 1, 2, and 3 to the proposed rule change.

II. Description of the Proposed Rule Change

A. Board of Directors

The proposed rule change would alter the composition of the Exchange's Board of Directors ("Board"). For example, CBOE proposes to increase the number of public representatives on the Board from four to eight. In addition, CBOE proposes to add a seat on the Board to represent owner/lessor members.⁷

To accommodate these new Board members, CBOE proposes other changes to the composition of the Board. For example, the proposal would increase the total size of the Board from 21 to 23 directors. In addition, the number of floor directors on the Board would be reduced from six to four and the president of the Exchange, who is currently a member of the Board, will no longer be a Board member.

The number of off-floor firm directors and at-large directors will remain

unchanged at six and three, respectively. In addition, the Chairman of the Exchange will continue to serve as a director.

Directors will continue to be elected for three-year terms, with all categories of directors to be elected by the members of the Exchange.⁸ During the transition, each director currently serving on the Board will be permitted to complete their current terms of office.

B. Qualifications of Directors and Officers

The proposed rule change also clarifies certain requirements applicable to specific categories of directors and officers. For example, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, the proposal specifies floor directors must be "on a seat" (i.e., acting in the capacity of a member by actively trading securities) in connection with their floor activity. In addition, the proposal clarifies the current requirement that a floor director must own or control a membership by specifying that a floor director may own a membership indirectly through an interest in a corporation, partnership, limited liability company, trust, or other entity that owns one or more memberships directly. A floor director with such indirect control, however, must have the sole and exclusive right to vote the membership and control its sale, and must possess all of the risks and rewards of a direct owner of at least 50% interest in a membership.

The proposed rule change also specifies an additional requirement for the Vice-Chairman of the Exchange, who is also the Chairman of the Executive Committee.⁹ The proposal would require the Vice-Chairman of the Exchange to be primarily engaged in business on the floor of the Exchange. The current constitution requires only that the Vice-Chairman own a CBOE membership.

C. Nominating Committee

The proposed rule change would increase the size of the Nominating Committee from seven to ten members to accommodate adding representatives of retail firms, lessors and the public. The Nominating Committee is the Exchange committee that determines which candidates are qualified for election to the Board and other Exchange committees. As proposed, the Nominating Committee will consist of

four floor members (except during the transition years, when the number of floor directors will first be six and then five), two members who represent firms that primarily conduct a public customer business, two members who are lessors of their memberships (at least one of whom must be a "passive" lessor),¹⁰ and two public members.

All members of the Nominating Committee will be elected by the membership and will serve three-year terms.¹¹ The Nominating Committee that will serve with respect to the 1999 annual election meeting shall include two lessor members, two firm members, and two public members. The Chairman of the Executive Committee, with the approval of the Board, shall appoint these new committee members for the 1999 annual election meeting. Thereafter, the new committee members shall be elected in the same process as other Nominating Committee members.

The Nominating Committee will judge the qualifications of all candidates for election to the Board or the Nominating Committee that are nominated by that Committee. The Executive Committee will judge the qualifications of candidates who are nominated by petition.

D. Other Changes

The proposed rule change also would modify the timetable for various election matters that are specified in the constitution. For example, the Exchange proposes to advance the time by which the Chairman of the Executive Committee (the Vice-Chairman of the Exchange) is selected by a few weeks to enable the Vice-Chairman to complete the process of selecting chairpersons of various Exchange committees by the end of the year. In addition, CBOE proposes to move the annual meeting of members from the second Monday in December to the third Friday in November. Finally, petitions for nominations of candidates for the Board or the Nominating Committee would be required to be submitted by the Monday preceding the first Friday in November, instead of the current November 15 deadline.

The proposed rule change also would delete those provisions that refer to "special members" because there are no longer members in this category. Finally, the proposal contains conforming amendments made necessary by the proposal's substantive changes.

³ Securities Exchange Act Release No. 41791 (August 25, 1999), 64 FR 48682.

⁴ Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division of Market Regulation ("Division"), SEC, dated September 23, 1999 ("Amendment No. 1"). Amendment No. 1 contained grammatical changes to the proposed rule language and contained a chart describing the composition of CBOE's Board of Directors during the transition period when the proposed changes are implemented.

⁵ Letter from Debora Barnes, Senior Attorney, CBOE, to Richard Strasser, Division, SEC, dated September 24, 1999 ("Amendment No. 2"). Amendment No. 2 made further grammatical corrections to the proposed rule language.

⁶ Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, Division, SEC, dated October 14, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80(b)(1), which provides for the composition and election of the MTS Appointments Committee ("MTS Committee"). Amendment No. 3 reflects changes proposed by the Exchange in an earlier filing submitted to the Commission for approval. See Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (File No. SR-CBOE-98-54).

⁷ An owner/lessor member includes those members that own a CBOE membership but are not actively engaged in business as a broker-dealer. These owner/lessors are also referred to as "passive lessors."

⁸ Currently, public directors are appointed by the Chairman of the Exchange.

⁹ The Exchange Committee is responsible for managing the business and affairs of the Exchange.

¹⁰ See *supra* note 6.

¹¹ During the transition period, some members may be elected for shorter terms.

E. CBOE Rule 8.80(b)(1)

In Amendment No. 3, the Exchange proposes to amend CBOE Rule 8.80, which, among other things, governs the composition and election of the Modified Trading System ("MTS") Committee.¹² The MTS Committee governs the Exchange's designated primary market maker ("DPM") program. The changes proposed in Amendment No. 3 were originally submitted by the CBOE in File No. SR-CBOE-98-54.¹³

The proposed changes to Rule 8.80(b)(1) provide for the election of MTS Committee members, which are currently appointed by the Nominating Committee with the approval of the Board. The election procedures proposed would be the same as those used for the election of the Exchange's directors. Accordingly, the election process would begin in October of each year when the Nominating Committee selects nominees to fill expiring terms and vacancies. The proposal also provides that MTS Committee members will serve three-year terms, which is an increase from the current two-year terms requirement. The Exchange proposes to add Amendment No. 3 to this proposal because of the election process timeline.

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 national securities exchange.¹⁴ In particular, the Commission believes that the proposal is consistent with Section 6(b)(3) of the Act.¹⁵

One of the requirements of Section 6(b)(3) of the Act provides that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission has consistently stated its belief that representation of the public on exchange oversight committees that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.¹⁶ Further, public representation helps to ensure that no single group of investors has the ability to systematically

disadvantage other market participants through the exchange governance process.

The proposed rule change amends the composition of the Board by increasing the number of public directors from four to eight. As a result, public directors will compromise nearly 35 percent of the Board, compared to the current 19 percent public representation. The Commission believes that this increase should substantially increase the public's voice on CBOE's Board, which is consistent with Section 6(b)(3) of the Act.¹⁷ Public directors should bring knowledge of the interests of investors to the governance of the Exchange and provide a balance to the composition of the Board. They should possess a unique perspective, which should enhance the ability of the Board to address exchange issues in a non-discriminatory fashion.

In addition to increasing the number of public directors on the Board, the proposal adds two public members to the Nominating Committee. By adding public members to the Nominating Committee, the proposal should help to ensure that a fair and broad cross-section of members and the public are represented in the administration of the affairs of the Exchange.

The second requirement of Section 6(b)(3) of the Act¹⁸ states that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs. This requirement seeks to ensure that an exchange is administered in a way that is equitable to all market members and participants. A registered exchange is not solely a commercial enterprise. It has significant regulatory responsibilities with respect to its members, such as the responsibility to act fairly in adjudicating disciplinary proceedings against members. Therefore, the statute seeks to ensure that members' interests are adequately represented and protected.

The proposed rule change provides for the election for public directors.

Currently, public directors are appointed by the Chairman of the Board and approved by the full Board. Public directors will now go through the full nominating and election process. This amendment provides members with a greater role in the administration of the Exchange and allows them to have a greater impact on the composition of their governing body.

The composition of the Board was further amended by the proposal to include the owner/lessor member community. Currently, approximately 85 percent of CBOE's memberships are leased.¹⁹ By including lessor directors on the Board, the CBOE recognizes this large segment of its member population and provides it with a greater voice in the administration of the Exchange's affairs.

To accommodate the new owner/lessor director and the additional public directors, the proposal decreases the number of floor directors on the Board from six to four. The Commission finds that in light of the amount of lessor members and the public interest served by adding public directors this reduction is reasonable.²⁰

The qualifications of floor directors also were amended by the proposed rule change. Floor directors will be required to be "on a seat" (*i.e.*, acting in the capacity of a member by actively trading securities) to be qualified for a director position. This new requirement, in addition to the current requirement that floor directors be primarily engaged in business on the floor of the Exchange, should ensure that floor members' interests are adequately supported. This new requirement should ensure that floor directors have a full appreciation and understanding of the issues that are of concern to floor members.²¹

The qualifications of the Vice-Chairman of the Board were also clarified to explicitly require that the Vice-Chairman be primarily engaged in business on the floor of the Exchange. By adding this requirement, the Vice-Chairman should be equipped with an in-depth knowledge of the business of the Exchange, which will enable him or her to make decisions and implement

¹⁷ The Commission notes that currently the American Stock Exchange, National Association of Securities Dealers and its subsidiaries, and the Chicago Stock Exchange each have composed their boards so that industry directors do not outnumber the remaining directors. In addition, the Pacific Exchange, PCX Equities and the International Securities Exchange ("ISE") have each filed proposals that provide for the composition of their boards to include at least 50 percent public representation. See File No. SR-PCX-99-33 (proposing to amend the constitution of the Pacific Exchange); SR-PCX-99-39 (proposing to establish PCX Equities); and Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29867 (June 1, 1999) (the ISE application for exchange status).

¹⁸ 15 U.S.C. 78f(b)(3).

¹² See Amendment No. 3, *supra* note 6.

¹³ See Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999).

¹⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(3).

¹⁶ See, e.g., Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

¹⁹ Telephone call between Debra Barnes, Senior Attorney, CBOE and Kelly Riley, Attorney, SEC, on October 7, 1999. As of September 30, 1999, CBOE and 931 memberships of which 794 are leased.

²⁰ Upon approval of this proposal and the subsequent elections to implement these changes, the Board will consist of eight public directors, six off-floor firm directors, four floor directors, three at-large directors, one owner/lessor director, and the Chairman of the Board.

²¹ The Commission notes that an owner/lessor of multiple seats might qualify under more than one category of director.

policies that are in the best interest of the Exchange and its members.

The proposal also amended the composition of the Nominating Committee to include representatives of retail firms, lessors and the public. Floor members will continue to be represented. The new composition should provide the differing member communities with a voice in the candidates presented for election to the Board and other Exchange committees, which should ensure that a fair cross-section of qualified candidates are presented to members for election. By providing a balanced committee that is composed of the diverse member constituencies of the Exchange, the proposal should prevent the discriminatory exclusion of qualified candidates.

Finally, the Commission finds good cause to accelerate approval of Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Amendment Nos. 1 and 2 proposed grammatical changes to the original filing. As Amendment Nos. 1 and 2 were merely technical in nature and do not raise any novel issues of regulatory concern, the Commission finds good cause to accelerate their approval.

Amendment No. 2 provides for the election of MTS Committee members, which are currently appointed by the Nominating Committee. The MTS Committee is charged with governing the DPM program on the floor of the Exchange. By allowing members to elect the members of this committee, the amendment enables Exchange members to be more actively involved in the administration of the Exchange. Moreover, the Commission finds that extending the MTS Committee members' terms of office to three years should enhance continuity in the application of Exchange rules and policies and should increase the expertise of the MTS Committee in addressing issues related to the DPM program. The Commission finds good cause to accelerate Amendment No. 3 because the election process for the Exchange is scheduled to begin in October and the Commission believes that it would be beneficial for members to elect the new MTS Committee members in the 1999 election. Further, the Commission notes that the proposed changes were published for public comment in the **Federal Register** and that no comments were received on the proposed changes.²² Therefore, the Commission believes that good cause

exists, consistent with Section 6(b)(3) of the Act²³ and Section 19(b)²⁴ of the Act, to approve Amendment Nos. 1, 2, and 3 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are 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 CBOE. All submissions should refer to File No. SR-CBOE-99-43 and should be submitted by November 15, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the amended proposed rule change (SR-CBOE-99-43) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-27715 Filed 10-22-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42012; File No. SR-CBOE-99-56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Operation of the Retail Automatic Execution System

October 15, 1999.

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 October 6, 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 CBOE. 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 policy concerning the administration of its rules governing the operation of its Retail Automatic Execution System ("RAES"). The new policy concerns the handling of orders on RAES in cases where the CBOE's best bid or offer is inferior to the best bid or offer in another market. The policy will be reflected in new Interpretation .08 to rule 6.8. 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.

²³ 15 U.S.C. 78f(b)(3).

²⁴ 15 U.S.C. 78s(b).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.40-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² See *supra* note 6.