

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.

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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.

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

Interpretation .02 to CBOE Rule 6.8 governs the handling of orders for multiply-traded options on RAES in cases where the CBOE's best bid or offer is inferior to the current best bid or offer in any other market. When RAES receives an order for a multiply-traded option at a time when a better bid or offer for that option (the National Best Bid or Offer, or "NBBO") is displayed on another exchange, the order will either be rejected for manual handling (so that the order is not automatically executed at an inferior price to the NBBO), or the order will be executed at the NBBO if the NBBO is better than the CBOE bid or offer by no more than the designated number of minimum trading variations ("step-up amount"). Pursuant to Interpretation .02 to rule 6.8, the appropriate Floor Procedure Committee ("FPC") determines which option classes will be entitled to be executed automatically at the better bid or offer and also determines the step-up amount at which the order still will be executed automatically on RAES.³ In situations where the NBBO is better than the CBOE bid or offer by more than the number of ticks represented by the designated step-up amount, the order will be rerouted for manual handling.

The application of a step-up amount (pursuant to Interpretation .02 to rule 6.8), particularly a step-up amount two "ticks" or more, could result in a crossed market on the Exchange (i.e., a market where a stepped-up bid would be higher than the best offer, or a stepped-down offer would be lower than the best bid). The Exchange believes that it is inconsistent with a fair and orderly market for an automatic step-up to result in a crossed market. Moreover, by forcing market makers to buy options contracts at higher prices than they can sell those contracts, a crossed market subjects market makers to potentially significant losses.⁴ The proposed new policy will prevent these occurrences as further described below.

Under proposed new Interpretation .08 to Rule 6.8, orders will not be

automatically executed on RAES at stepped-up prices in situations where, after applying the step-up amount, there would be a crossed market on the Exchange. Any orders prevented from being automatically executed by operation of this policy will be rerouted to the Public Automated Routing ("PAR") machine of the Designated Primary Market Maker ("DPM") for manual handling.⁵ Upon receipt of that order, in accordance with CBOE Rule 6.73, the floor broker or DPM will be obligated to use due diligence in the handling of the order to execute the order at the best price or prices available to him.

In addition, pursuant to the Exchange's firm quote rule, Rule 8.51, any order that is rerouted will be entitled to be executed at the Exchange's displayed bid or offer when that order is represented in trading crowd. Of course, depending on the circumstances, that order may be filed at a price better than the DBOE's displayed bid or offer.

By preventing the automatic execution of orders at prices that reflect crossed markets on the Exchange, the Exchange represents that the proposed policy is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to remove impediments to the perfect the mechanism of a free and open market.

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

The CBOE 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, Participant or Others

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) under the Act because:

(i) It does not significantly affect the protection of investors or the public interest;

(ii) It does not impose any significant burden on competition; and

(iii) By its terms, it does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

In this regard the CBOE has agreed that the proposal need not become operative for 30 days, but has requested that the operative date be accelerated. In addition, the CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of filing of the proposed rule change.

The Commission finds that it is appropriate to designate the proposal to become operative today because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change because the proposal will allow the CBOE to provide the benefits of a larger "step-up amount" for a greater number of customers, promoting prompt executions of these customer order at the NBBO. In addition, the proposal is similar to a rule of the Pacific Exchange, Inc. ("PCX") that was approved by the Commission in September 1998.⁶ For these reasons the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.⁷

The Commission requests, however, that the CBOE provide it with information regarding the occasions in which the new Interpretation is applied and the promptness of the manual execution of orders that are prevented from automatic execution by operation of the new Interpretation. This data should cover, at a minimum, the period commencing as of the proposed Interpretation's operative date and concluding six months thereafter.

³ In this regard, the Commission recently approved an amendment to Interpretation .02 that authorizes the appropriate FPC to establish a step-up amount greater than the one-tick increment established pursuant to CBOE rule 6.42. See Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (SR-CBOE-99-17).

⁴ Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 6, 1999).

⁵ The PAR screen is a dynamic touch-screen terminal designed to allow electronic representation of crowd-routed orders. The PAR screen enables a broker to trade, cancel, print or electronically book an order or bundle of orders. When the order is filled or canceled, the execution or cancel report is sent from the trading pit to the branch. Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (October 12, 1999).

⁶ Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (SR-PCX-98-27).

⁷ In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation consistent with Section 3(f) of the Act, 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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.

VI. Solicitation of Commission

Interested persons are invited to submit 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 amendments, all written statements with respect to the proposed rule change that are filed with 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-99-56 and should be submitted by November 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-42025; File No. SR-CHX-99-12)]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by the Chicago Stock Exchange, Inc. To Modify the Recommended Fine Schedule for the Submission of Late Financial and Operational Reports

October 18, 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 August

30, 1999, the Chicago Stock Exchange, Inc. ("CHX" 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 CHX. On October 5, 1999, the CHX submitted Amendment No. 1 to the proposed rule change.³ 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 Exchange proposes to eliminate the fixed fine schedule in Exchange Article XI, Rule 4,

Interpretation and Policy .02 ("IP.02"), regarding the submission of late financial and operational reports and subject violations under the rule to the CHX Minor Rule Violation Plan's standard recommended fine schedule. The text of the proposed rule change is available at the Office of the Secretary, the CHX 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 CHX 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 plates specified in Item IV below. The CHX 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

On May 30, 1996 the Commission approved a proposed rule change that established a CHX minor rule violation plan ("MRVP" or "Plan").⁴ Under the

³ See letter from Angelo Evangelo, Senior Attorney, Market Regulation, CHX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated October 1, 1999 ("Amendment No. 1").

⁴ Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (approving amendments to paragraph (c)(2) of Rule 19d-1 under the Act). The CHX's Plan was approved by the Commission in 1996. See Securities Exchange

Plan, the failure to file required financial and operational reports in a timely manner subjects members to a sanction. However, for such violations, the Plan's recommended fine schedule mirrors the fine schedule contained in IP .02. That fine schedule subjects members to late filing charges as follows:

Days Late/Amount

1-30—\$100

31-60—\$200

61-90—\$400

The Exchange is now proposing to eliminate the fixed fine schedule in IP .02, and to subject violations under the rule to the recommended fine schedule applicable to most other violations handled under the Plan. The recommended fine schedule provides that a \$100 fine be imposed for the first violation within a rolling twelve month period and a \$500 fine and \$1000 fine be imposed for the second and third such violations. The Exchange believes that the proposed change would allow the MRVP panel to levy higher fines for the late submission of financial and operational reports.⁵

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations under that Act which are applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act. The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be disciplined appropriately for violations of the rules of the exchange.

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.

Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving File No. SR-CHX-95-25).

⁵ With respect to the issue of how the MRVP panel would handle violations that differ in terms of the length of time submissions are overdue, the Exchange believes that the MRVP panel, in such instances, would use its discretion in determining appropriate fine amounts. Although the proposed new fine schedule would not expressly state that higher fine amounts are appropriate for overly late submissions, the Exchange indicates that the MRVP panel likely would exercise its discretion to sanction members in accordance with the number of days a report was late. See Amendment No. 1, *supra* note 3.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.