

security's average daily volume or its status as multiply-traded, the participation amount will be a simple fixed percentage. Each DPM will be entitled to the same participation amount regardless of the security's volume or status.

The Commission agrees with the Exchange's assertion that the proposal should foster a more equitable result than under the current staggered approach. Now, all DPMs will be entitled to the same amount of participation regardless of the security. Moreover, the fixed percentage should be easier to apply than the current formula. Therefore, the proposal should improve the operation of the DPM program.

The Commission notes that the DPM participation right was established as an incentive to spark interest in the DPM program and to entice DPMs to remain in the program. This purpose is still valid today as the DPM program expands floor-wide. DPMs assume additional affirmative obligations, which are not required of other members. These additional obligations include, among other things, the obligation to be present at the trading post throughout the business day, the obligation to participate at all times in automated execution and order handling systems such as RAES, and the obligation to act as an order book official and maintain the public order book. These additional obligations are required of all DPMs regardless of the volume or multiply-traded status of the DPM's allocated security and, thus, the Exchange's proposal to establish a flat participation entitlement appears reasonable and fair.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-99-32) is approved.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42186; File No. SR-CBOE-99-27]

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

November 30, 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 June 18, 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 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

The CBOE proposes to amend Exchange Rule 9.21, *Communications to Customers*, which governs communications from member firms to customers or members of the public. The proposed rule change would permit the use of non-standard worksheets, provided that such worksheets meet the requirements applicable to sales literature, pursuant to Exchange Rule 9.21. 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.

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

##### 1. Purpose

Exchange Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines")<sup>3</sup> to explain the customer communications rules of the options exchanges and the interpretations of these rules. Following the recommendations of the Commission's Special Study of the Options Markets, the CBOE and other self-regulatory organizations amended their rules to require uniform options worksheets.<sup>4</sup> The proposed rule change seeks to eliminate the requirement that mandates that standard forms of options worksheets be uniform within a member organization (i.e., for specific types of options and strategies).

Under existing rules, worksheets are deemed sales literature. The proposed rule change will allow a member organization, or its associated person, the ability to tailor worksheets to specific prospective or existing clients, to utilize worksheets that may be commercially available, or to use Exchange or other industry developed worksheets. The Exchange believes that this change would expand the quantity and quality of options worksheets available for member use, thereby enhancing the member's ability to adequately describe the risks and benefits of options. Of course, member organizations may decide to require within their written supervisory procedures that options worksheets be standardized within their respective organizations. So that the Exchange could ensure that worksheets fulfill their objective, worksheets would continue to be subject to the content and approval requirements of material deemed sales literature, as required by existing Exchange Rule 9.21.

##### 2. Statutory Basis

The CBOE believes that the proposal is consistent with Section 6(b) of the

<sup>3</sup> See Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File No. SR-Amex-90-38; SR-CBOE-90-27; SR-NASD-91-02; SR-NYSE-90-51; and SR-PSE-90-41).

<sup>4</sup> See Report of the Special Study of the Options Market, Chapter V, page 130 (December 22, 1978); Securities Exchange Act Release No. 15575 (Feb. 22, 1979) (Order implementing certain recommendations contained in the Commission's Special Study of the Options Market).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The CBOE expects other self-regulatory organizations to make similar amendments to their rules.

#### *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 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 is consistent with the Act. Persons making written submissions should file 6 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 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-99-27 and should be submitted by December 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Johathan G. Katz,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42187; File No. SR-CBOE-99-58]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Adopt a Stated Policy that Clarifies the Maintenance Rules Governing the Replacement of Component Stocks in the Dow Jones High Yield Select Ten Index**

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 28, 1999, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 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**

The Exchange seeks to adopt a stated policy that clarifies the maintenance rules governing the replacement of component stocks in the Dow Jones High Yield Select Ten Index ("Index"). The Exchange currently lists and trades option on the Index.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

<sup>7</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.

#### **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**

In December 1997, the Commission approved a CBOE proposal to list and trade options on the Index ("Index Options Filing").<sup>3</sup> The Index is comprised of the ten highest yielding stocks in the Dow Jones Industrial Average ("DJIA"), as determined at the end of each calendar year.

As part of the Index Options Filing, the Exchange represented that if it became necessary to remove a component from the Index the component would be replaced by the highest yielding DJIA component stock not already included in the Index. In making this representation, the Exchange intended to specify the action it would take if the shares of an Index component company became unavailable for trading due to a corporate action (e.g., takeover or merger) or bankruptcy. However, the Exchange did not address situations where a company is removed from the DJIA for discretionary reasons, but its outstanding shares nevertheless remain available for trading.

The recent changes to the DJIA components, which resulted in the removal of four Index components from the DJIA, highlighted an ambiguity in CBOE's existing rules that govern the replacement of component stocks in the Index. Specifically, if an Index component is removed from the DJIA during the calendar year for discretionary reasons, must that Index component be immediately replaced, or may the component remain in the Index until the Index is reconstituted at the end of the calendar year? The Exchange believes that this proposed rule change will help clarify the maintenance

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

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

<sup>3</sup> See Securities Exchange Act Release No. 39453 (Dec. 16, 1997), 62 FR 67101 (Dec. 23, 1997).