

procedure for affecting a clean-up sale at a single price outside the APQ is fairest to all parties and, accordingly, does not propose to amend this process.

The Exchange is proposing to adopt eQPriority on a six-month pilot program basis to assess its benefits and costs.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 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.,

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 in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-00-07 and should be submitted June 28, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42857; File No. SR-CBOE-00-02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Governing the Final Settlement Value of Index Options in the Event of a Primary Market Closure

May 30, 2000.

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 February 15, 2000, 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. On February 25, 2000, the CBOE 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 and to approve the proposal on an accelerated basis.

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

The CBOE proposes to amend its rules governing the settlement procedures for its index options in certain unusual circumstances. The text of the proposed rule change is available at the CBOE and at the Commission's Public Reference Room.

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 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

Based on recent events, the Exchange proposes to change settlement procedures for index options when a primary market for underlying stocks in an index does not open on the scheduled settlement day. Under such circumstances, the proposed rule change will allow the use of the next available opening prices for the affected underlying securities to calculate the settlement value of the index options.

On Thursday, September 16, 1999, it was feared that the New York Stock Exchange, Inc. ("NYSE") would not open for business the next day as Hurricane Floyd traveled up the Eastern seaboard. In the event that the NYSE had not opened on Friday, September 17, an expiration Friday, the settlement of index options and futures contracts would have been affected. A review of this situation demonstrates the critical need for this rule change.

Current CBOE index option settlement rules do not expressly address a situation when an entire primary market, such as the NYSE, fails to open for business. The closest applicable rules, such as CBOE Rule 24.9(a)(4), provide that a specific underlying security in an index does not open, the *last* reported sale price of such a security will be used to determine the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CBOE corrected the filing number, changing it from SR-CBOE-99-02. See letter from Christopher R. Hill, Attorney, Office of Enforcement, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 24 ("Amendment No. 1").

settlement price of index options. Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of September index options would have been established by looking *backward* to the previous day's *closing* prices for NYSE stocks (*i.e.*, the closing prices on Thursday, September 16.)

This 'backward focus' of the CBOE index option settlement rules threatened to cause severe difficulties during the Hurricane Floyd situation, both for investors who traded stock index options against the underlying stocks as well as those who traded the index options against index futures. Both groups of investors rely upon the final settlement value of index options to converge with the corresponding values of the underlying stock index or stock index future. For both groups, however, the backward focus of the CBOE index option settlement rules threatened to prevent this convergence in September.

Many public customers and market makers use stock index options to hedge "cash" positions they hold in the stocks which make up the index. Because current CBOE settlement rules would have looked backwards to the Thursday, September 16, closing prices of NYSE stocks to determine the final settlement value of September stock index options if the NYSE had not opened on Friday, September 17, investors who wished to make sure their stock position converged with their option position in the event of a Friday NYSE closure would have had to exit their NYSE stock positions that Thursday.

Obviously, however, no investor could know for certain on Thursday whether weather conditions on Friday would prevent the opening of the NYSE. *Thus, the backward focus of the current CBOE settlement rule forced investors who wished to stay hedged to guess about the future.* If they guessed that Hurricane Floyd would keep the NYSE closed on Friday, they would have to exit their stock positions on Thursday. If they guessed that Floyd would not close the NYSE, they would hold their stock positions until Friday. Either way, if they guessed wrong, their stock and option positions would not converge at expiration, and they would be exposed to the very market risk they had sought to use options to avoid.

Public customers and market makers that trade index options against stock index futures faced similar difficulties. For example, numerous investors trade the SPX (the index option based on the S&P 500 Stock Index) against the S&P 500 future, which trades at the Chicago Mercantile Exchange, Inc. ("CME"). Unlike CBOE's settlement rules, the

CME's settlement rules for the S&P 500 future are *forward*-focused. If a primary market for a component stock in the S&P 500 Index does not open on the day scheduled for determination of the Final Settlement price of the S&P 500 future, then the price of that stock is determined, for the purposes of calculating the Final Settlement Price of the future, based on the *opening* price of that stock on the *next* day that its primary market is open for trading.⁴

Thus, if Hurricane Floyd had prevented the NYSE from opening on Friday, September 17, the final settlement value of the September S&P 500 futures would have been established under CME rules according to the opening price that following Monday, September 20, of those stocks which had not traded on Friday. At the same time, the final settlement value of the SPX options would have been established under CBOE rules according to the closing price of those stocks on Thursday, September 16. In other words, the final settlement values of the September SPX options and the September S&P 500 futures would most likely have differed, rather than converged.

Had this occurred, the Exchange believes that it would have affected a significant number of SPX traders (both public customers and market makers) because a lot of them hedge their option positions with S&P 500 futures contracts. Had the S&P futures and the SPX not converged at expiration on Friday, September 17, these traders could have faced significant unexpected exposure to market risk.

The problems detailed above can be prevented if the CBOE changes its index option settlement rules to be forward-focused. If such a rule had been in place for SPX options on Thursday, September 16, no public customer or market maker would have been forced to guess on Thursday about the impact of Hurricane Floyd on Friday. If weather had shut the NYSE down until Monday, September 20, the final settlement value of the September SPX options would be calculated using the Monday opening prices of the NYSE stocks. Any investor using SPX options to hedge stock positions in the S&P 500 Index could have held their stock positions until they knew what was going to happen on

Friday. Even if the NYSE had been closed that day, they could have simply exited their stock positions with confidence on Monday simply by entering "Market on Open" orders for all affected stocks. Further, a forward-focused settlement rule in cases of primary market closure would also have assured convergence at settlement between the value of index options and index futures.

For all the above reasons, there is a strong consensus among market participants consulted by the Exchange that the Exchange should change its index option settlement rules to be forward-focused, and this proposed rule change achieves that in its amendment of CBOE Rule 24.9(a)(4) and its addition of the new CBOE Rule 24.7(e). The provision set forth in the proposed new Rule 24.7(e) would apply to all index options traded on the Exchange. In the event that a primary market for one or more securities underlying a current index does not open for trading on a given day, the price of such securities shall be determined, for purposes of calculating the current index value at expiration, by reference to the opening price of those securities on the next day that their primary market reopens for trading.

This provision also recognizes the authority of the Options Clearing Corporation ("OCC") to establish a final settlement value for index options in the event of a primary market closure pursuant to its Rules and By-Laws. The proposed rule change makes clear that such action by the OCC would take precedence in determining any final index settlement value.

2. Statutory Basis

CBOE believes that the proposed changes to CBOE Rules 24.7 and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5)⁵ of the Act. By establishing a CBOE Rule which defines current index option settlement values in the event of a primary market closure, and does so with a forward rather than a backward focus, this filing will help public customers and market makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. The Exchange believes that this will improve the efficiency of, remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, thus better protecting investors and the public interest.

⁴ See CME Rule 4003.A. In part, CME Rule 4003.A states, "If the primary market for a component stock in the index does not open on the day scheduled for determination of the Final Settlement Price, then the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the opening price of that stock on the next day that its primary market is open for trading."

⁵ 15 U.S.C. 78f(b)(5).

3. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5)⁶ of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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 Member, Participants, or Others

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

III. 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 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-00-02 and should be submitted by June 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.⁷ In particular, the Commission finds the proposal is consistent with section 6(b)(5)⁸ of the Act. Section 6(b)(5)

requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal promotes just and equitable principles of trade. In particular, the proposal clarifies index settlement procedures in the unusual situation when a primary market where component stocks trade is closed on the index settlement day. By way of example, the CBOE discusses a situation in the fall of 1999 when some people thought the NYSE would be closed on the settlement day. This closure would have affected many index options traded on CBOE, including S&P 500 index options. If the market did not open, CBOE's settlement rules would have required the Exchange and the OCC to look at the previous closing prices for component stocks that traded on the NYSE. This procedure varied from the settlement procedures of a futures exchange that traded futures on the S&P 500 index. Moreover, the settlement procedure also placed investors in S&P 500 index options in the unusual situation of having to guess as to whether the NYSE would open on the settlement day. By relying on the opening price of a security on the next day the primary market is open, the proposal helps clarify CBOE index settlement procedures and also makes these procedures conform to industry practice in the futures markets. Further, the proposal helps reduce investor confusion by implementing rules that foster investor certainty in the unusual situation when a primary market where component stocks trade is closed on the index settlement day.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR-OCC-00-01, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comments.⁹ The current proposal mirrors the changes that were proposed by the OCC in SR-OCC-00-01. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with section 6 of the Act.¹⁰

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-00-02), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-14257 Filed 6-6-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42850; File No. SR-CBOE-00-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees

May 30, 2000.

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 March 3, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 12, 2000, the Exchange 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 make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange corrected the Schedule of Dues and Fees contained in Appendix A to reflect what the Exchange's fee schedule stated with respect to equity option customer order fees and trade match fees before the proposed rule change was filed. See Letter from Angelo Evangelou, Attorney, Legal Division, CBOE, to Jennifer Colihan, Attorney, Division of Market Regulation, SEC, dated April 11, 2000 ("Amendment No. 1").

⁶ 15 U.S.C. 78f(b)(5).

⁷ In addition, pursuant to section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Release No. 34-42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) (order approving SR-OCC-00-01.)

¹⁰ 15 U.S.C. 78f.