response, to be maintained by the administering entity of the peer review program and be made available to the Exchange upon request.[6] Similarly, working papers of the administering entity and the independent oversight body would also be required to be retained for 90 days after the report is filed, and be made available to the Exchange upon request.

In addition, the Exchange believes that auditors of listed companies should be subject to a practice monitoring program under which the auditor's quality control system is reviewed by an independent peer auditor on a periodic basis. Consequently, after the initial peer review required by proposed Section 605(a) of the *Amex Company Guide,* independent auditors of listed companies would be required to receive a peer review that meets the guidelines of proposed Section 605(b) every three years pursuant to AICPA guidelines.[7]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[9] The Commission believes that the proposed rule change will protect investors by improving the reliability and effectiveness of audit committees of companies listed on the Exchange and by helping to ensure that an auditing firm's quality control systems are subject to a level of review that satisfies standards established by the accounting industry. In addition, the Commission believes that by requiring auditors to receive a peer review on a periodic basis, the proposal will help to ensure that auditors will continue to have quality control systems in place and follow independently established policies, procedures, and auditing standards. Finally, by requiring the administering entity and the independent oversight body of the peer review program to retain peer review records and to allow the Exchange access to these records, the Commission believes that the proposed rule change will help enable the Exchange to enforce the peer review requirement.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–00–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[6] The administering entity would be required to maintain the reports until the completion of the next peer review report. Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[7] Telephone call between Sonia Patton, Attorney, Commission, and John Nachmann, Attorney, Office of the General Counsel, The Nasdaq-Amex Market Group, on March 28, 2000.

[8] 15 U.S.C. 78f(b)(5).

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

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43087; File No. SR–CBOE–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Prohibition of Certain Electronically Generated Orders From Being Entered in the Order Routing System

July 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is given that on February 9, 2000, the Chicago Board Options Exchange, Incorporated (''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 Exchange. On March 6, 2000, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] On April 28, 2000, the CBOE filed with the Commission Amendment No. 2 to the proposed rule change.[4] On July 10, 2000, the CBOE filed with the Commission Amendment No. 3 to the proposed rule change.[5] the Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend its rules to prohibit certain electronically generated orders from being entered on ORS.

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

In its filing with the Commission, 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

The proposed rule change seeks to restrict the entry of certain options orders that are created and communicated electronically, without manual input, into ORS.[6] For this purpose, the Exchange is proposing to adopt a new Rule 6.8A, *Electronically Generated and Communicated Orders.*

Proposed Rule 6.8A provides that Members may not enter nor permit the entry of, orders into ORS if those orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 3, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposed to create a new rule, ''Electronically Generated and Communicated Orders,'' rather than including the proposed rule language as a subsection in another rule.

[4] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2000 (''Amendment No. 2''). In Amendment No. 2, among other things, the Exchange proposed to prohibit electronically generated orders only if they were eligible for execution on the Exchange's Retail Automatic Execution System (''RAES'').

[5] *See* letter from Timothy Thompson, Director, Regulatory Policy, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 6, 2000 (''Amendment No. 3''). In Amendment No. 3, among other things, the Exchange revised its statement regarding the purpose of the proposed rule change. In addition, the Exchange revised the proposed rule language to clarify that electronically created orders will be prohibited from entry into the Order Routing System (''ORS'') if they are eligible for execution on RAES at the time they are sent to the Exchange. Amendment No. 3 also clarified the types of orders that are considered to be eligible for execution on RAES at the time they are sent.

[6] ORS is the Exchange's automated order trading and routing system comprised of the options order routing system, the automatic execution system (RAES), the electronic limit order book, and other electronic delivery and acceptance systems and terminals.

are created and communicated electronically without manual input and if such orders are eligible for execution on RAES at the time they are sent. Order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. The proposed rule states that members are not prohibited form electronically communicating to the Exchange orders manually entered by customers into front-end communication systems (*e.g.*, Internet gateways, online networks, etc.).

The proposed rule clarifies that an order is eligible for execution on RAES if: (1) Its size is equal to or less than the maximum RAES order size for the particular series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by the RAES system. A marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or if to buy is above or at the current offer. An order is tradable pursuant to the RAES auto step-up feature if the appropriate Floor Procedure Committee has designated the class as an auto step-up class and if the National Best Bid or Offer for the particular series is reflected by the current best bid or offer in another market by no more than the step-up amount as defined in Interpretation .02 of Rule 6.8.

The Exchange represents that its business model depends upon market makers for competition and liquidity. The Exchange represents that public customer orders submitted to the CBOE are provided with certain benefits pursuant to various rules of the Exchange, including Rule 6.8, *RAES Operations,* Rule 6.45, *Priority of Bids and Offers,* Rule 7.4, *Obligations for Orders,* and Rule 8.51, *Trading Crowd Firm Disseminated Market Quotes.* Allowing electronically generated and communicated customer orders to be routed directly of ORS and RAES would give customers with such electronic systems a significant advantage over market makers. The Exchange believes that this could undercut its business model. The Exchange notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through ORS.

Currently, CBOE member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, pursuant to the CBOE's telephone policies, a customer in some option classes may telephone an order directly to a floor broker in the trading crowd, provided the firm taking the order complies with all applicable rules for handling the customer order. In other trading crowds, a member firm representative or a customer may telephone an order into a member firm booth on the trading floor. From here the order may be taken manually into the proper trading crowd and represented; alternatively, it may be sent electronically from the booth to a floor broker in the trading crowd who will represent it. A member firm representative may also send an order to the floor of the Exchange pursuant to that firm's proprietary order routing network. The CBOE represents that almost every member firm has its own network for routing orders to the CBOE. The firm would then route the order to the trading crowd in one of the two ways described above. Finally, a member firm may send an order to the Exchange through its interface with ORS. Eligible orders sent through ORS may be: (1) Automatically executed against orders in the limit order book; (2) placed in the limit order book; (3) automatically executed via RAES; or (4) routed to a Public Access Routing (''PAR'') terminal in the trading crowd.

Under the proposed rule change, electronically generated and communicated orders that are eligible for execution on RAES at the time they are sent would be ineligible for routing through ORS. These orders could, however, be sent to the trading floor for execution as otherwise described above, *i.e.,* by telephone or through a member firm's proprietary order routing system.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] in particular by facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and promoting just and equitable principles of trade.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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, 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 CBOE.

All submissions should refer to File No. SR–CBOE–00–01 and should be submitted by August 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43083; File No. SR–CHX–99–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-opening Orders in Dual Trading System Issues

July 28, 2000.

I. Introduction

On January 3, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 [2] thereunder, a proposed rule change relating to the definition of preopening orders in Dual Trading System Issues. The proposed rule change was published for comment in the **Federal Register** on March 29, 2000.[3] The Commission received no comments on the proposal. On July 19, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change from interested persons, and has approved the amendment on an accelerated basis, as discussed below.

II. Description of the Proposal

The Exchange has proposed to amend its Article XX, Rule 37(a)(4), which governs guaranteed executions of preopening orders, to define what constitutes a pre-opening order in Dual Trading System Issues. A Dual Trading System Issue is an issue that is traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and that is also traded on either the New York Stock Exchange or American Stock Exchange.

Currently, CHX Rule 37(a)(4) requires that a preopening order be accepted and filled at the primary market opening trade price. Pursuant to this language, orders received at the CHX before the primary market publishes its first print [5] are customarily filled at the first print price. According to the CHX, it has applied the rule in this manner because prints are the most common way of effecting an opening in a security. Nevertheless, on occasion a primary market may open a security by disseminating a quote without a corresponding print. Thus, when a security is opened by the primary market with a published quote, orders received by the CHX after such quote has been published are not considered preopening orders.

According to the Exchange, the lack of a specific definition of what is a preopening order has caused confusion and led to unintended execution guarantees. Specifically, the Exchange stated that there has been confusion about the status of orders received on the CHX after a primary market has published a quote but before a primary market has published a print. Therefore, the Exchange's proposal would clarify that orders received after a primary market opens a security with a published quote are not preopening orders for the purposes of CHX Rule 37(a)(4). Specifically, the Exchange proposed to define a preopening order as an order received prior to a primary market's opening of a subject security, which can occur either with a trade or a quote. Thus, an order received on the CHX after the primary maket publishes a quote but before the primary market has published a print will not be considered a preopening order for the purposes of CHX Rule 37(a)(4) and therefore not entitled to be filled at a subsequent primary market print.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),[7] which requires, among other things, that the rules of an exchange be designed 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.

The Commission believes that the proposed definition helps to clarify the Exchange's rules regarding execution guarantees for Dual Trading System Issues. According to the Exchange, the lack of a specific definition regarding which type of orders will be executed at the primary market's opening trade price has caused confusion among investors. By providing a specific definition of a preopening order, the Exchange should be able to reduce confusion on this issue among investors and Exchange specialists and provide more certainty to investors on the execution price their orders are entitled to receive. The Commission believes that eliminating this confusion about how an order will be handled should enhance the efficiency of order executions on the CHX. Moreover, investors should be able to make informed decisions on where to route their orders for execution because they should have a clearer understanding about how their order will be handled and executed.

The Commission understands that the CHX's definition is consistent with the definition of preopening orders on other markets. Further, the Commission notes that there should not be confusion as to whether a primary market opens a security with a quote as opposed to a trade because, according to information provided by the CHX, information on how a stock opens (*i.e.,* whether it opens by a quote or a trade) is widely disseminated by market data vendors. Therefore, the Commission believes that the proposal should foster just and equitable principles of trade by specifically defining which orders are designated preopening orders and thus entitled to be executed at the primary market's opening trade price.

The Commission finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the CHX amended the language of the definition of preopening order to better reflect its intent that preopening orders are orders received by the CHX before a primary market opens a subject security, which can occur by either a quote or a trade. The Commission finds that the language proposed in Amendment No. 1 further clarifies the CHX's definition of preopening orders. Therefore, because the Commission finds that Amendment No. 1 does not substantively change the meaning or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 42566 (March 22, 2000), 65 FR 16677.

[4] Letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Kelly Riley, Attorney, Division of Market Regulation, SEC, dated July 17, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange replaced the originally proposed language defining a preopening order. As amended, CHX Rule 37(a)(4) will read: ''[f]or purposes of this rule, preopening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote.''

[5] A print is defined as an executed trade

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

[7] 15 U.S.C. 78f(b)(5).