

lottery. The funds received from each market making firm will be deposited into a separate account maintained by the BSE specifically for this purpose. Commencing on the launch date of the proposed BOX, deposits for those assignments that become "live" (*i.e.* available for a particular market maker to trade on BOX) will be released to BOX and be: (a) nonrefundable, (b) considered as pre-paid fees, and (c) credited against applicant's BOX account to offset trading, technology and other related fees and charges. Before any class becomes live for a particular market maker, if the applicant notifies BOX that he wishes to drop certain allocated classes, BOX will refund 50% of the related deposit. If an applicant does not receive an allocation in any requested class as a result of the initial allocation process, the deposit for those classes not allocated will be refunded to the applicant within fifteen (15) days of the date of the allocation process. The deposit amounts will vary for each class in the following manner: Category A \$45,000 per class, Category B \$9,000 per class, Category C \$6,000 per class, Category D \$2,250 per class, Category E \$750 per class, Category F \$300 per class. For example, if a firm applies to be market maker on all of the 250 classes to be listed at launch, the required deposit will be \$297,450.

Due to the fact that this proposed allocation plan is deemed to be a temporary process specifically designed to control the launch of the proposed BOX market, the Exchange is seeking approval of this proposal for a limited time, and will not, in any case, utilize this process, as currently set forth, any later than six months beyond the initial launch date of the BOX market.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objective of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

## 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 that is 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

The Exchange did not solicit or receive written comments on 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 Exchange 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. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-BSE-2003-13 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-20129 Filed 8-6-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48267; File No. SR-CBOE-2003-18]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend CBOE Rule 6.24 Relating to Systematizing Orders

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2003, the Chicago Board Options Exchange, Incorporated ("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 CBOE. On July 29, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange submitted this proposed rule change in order to comply with the requirement to implement a consolidated options audit trail system ("COATS"). The Exchange is submitting the proposed rule change to CBOE Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's September 11, 2000 Order ("Order").<sup>4</sup>

The text of the proposed rule change is set forth below. New text is in *italics*; deletions are in brackets.

\* \* \* \* \*

<sup>8</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.

<sup>3</sup> Amendment No. 1 replaces and supercedes the original filing in its entirety.

<sup>4</sup> Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

**Chapter VI**

\* \* \* \* \*

**Section B: Member Activities on the Floor**

\* \* \* \* \*

**[Orders Required To Be in Written Form] Required Order Information Rule 6.24**

(a) [Transmitted to the Floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.] *Orders Must Be Systematized. Commencing not later than August 29, 2003, each order, cancellation of, or change to an order transmitted to the Exchange must be systematized, in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange.*

An order is systematized if:

1. it is sent electronically to the Exchange; or
2. it is input electronically into the Exchange's systems immediately upon receipt on the Exchange, e.g., telephone orders.

(b) [Cancellations and Changes. Each cancellation of, or change to, an order that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such cancellation or change must record the time of its receipt on the floor.] *Exempt classes. The Exchange may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes (exempt classes) from the requirements in paragraph (a) of this Rule. With respect to orders for exempt classes:*

(i) *Transmitted to the Floor. Each order for an exempt class transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.*

(ii) *Cancellations and Changes. Each cancellation of, or change to, an order for an exempt class that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such cancellation or change must record the time of its receipt on the floor.*

[(c)iii] Executions. A member transmitting from the floor a report of the execution of an order for an exempt class must record the time at which a report of such execution is received by such member.

[(d)iv] On-floor Market-Maker Orders. Each order for an exempt class transmitted by a Market-Maker while on the floor, including any cancellation of or change to such order, must be recorded legibly in a written form that has been approved by the Exchange, and must be time stamped immediately prior to its transmission.

**\* \* \* Interpretations and Policies**

.01 Any member desiring to use an order form other than those provided by the Exchange must submit such form to the appropriate Floor Procedure Committee and obtain its approval prior to using such form on the Floor.

.02 (a) [Without limiting the applicability of the foregoing, the] *The use of hand signal communications on the floor of the Exchange may be used to initiate an order, to increase or decrease the size of an order, to change an order's limit, to cancel an order, or to activate a market order. [Unless an options class is exempted by the Exchange, a]Any initiation, cancellation, or change of an order relayed to a floor broker through the use of hand signals also must be relayed to the floor broker in [written] electronic form[, time-stamped,] immediately thereafter, unless the Exchange exempts an option class from this requirement. All other rules applicable to order preparation and retention, and reporting duties are applicable to orders in exempted options classes under this Interpretation, except that the record-keeping obligation lies with the member signaling the order where a hand signal is used. All cancellations and changes of orders held by the Board Broker or Order Book Official must be provided in [written] electronic form.*

(b) [Until further notice the following are exempt options classes under this Interpretation: OEX, SPX, NSX, and DJX.] *The Exchange may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes under this Interpretation. The Exchange will publish via regulatory circular those options classes that it has exempted under this Interpretation.*

.03 The appropriate Floor Procedure Committee will from time to time prescribe the form of Telephone and Terminal Order Formats in a Manual and the contents of this Manual are hereby incorporated in these Rules and

will have full force and effect as if fully set forth herein.

.04 *Stop-limit orders as defined in Rule 6.53(c)(iv) are exempt from the requirements of paragraph (a) of this Rule until December 11, 2003, or such earlier date as the Exchange's order routing and execution systems have the functionality to handle stop-limit orders.*

.05 *Accommodation liquidations as described in Rule 6.54 are exempt from the requirements of paragraph (a) of this Rule.*

\* \* \* \* \*

**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 parts of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

The Exchange proposes this amendment to its current rules to comply with the requirement to implement COATS. The Exchange is submitting the proposed rule change to CBOE Rule 6.24 in connection with subparagraph IV.B.e(v) of the Commission's Order,<sup>5</sup> which requires the options exchanges to design and implement COATS to "incorporate into the audit trail all non-electronic orders (such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order \* \* \* ("Phase V")).

In order to assure that all non-electronic orders are incorporated into COATS for Phase V, the proposed rule change would amend CBOE Rule 6.24, which currently requires orders to be in written form. The proposed rule change would require that each order, change to

<sup>5</sup> *Id.*

an order, or cancellation of an order transmitted to the Exchange must be "systematized", in a format approved by the Exchange, either before it is sent to the Exchange or immediately upon receipt on the floor of the Exchange.<sup>6</sup>

Each order, change to an order, or cancellation of an order may be systematized in one of two ways. If an order, change to an order, or cancellation of an order is sent electronically to the Exchange, it is systematized. Alternatively, if an order, change to an order, or cancellation of an order is input electronically into the Exchange's systems immediately upon receipt on the Exchange, it is systematized.

The Exchange believes that the systematization requirement may be fulfilled in practice in a number of ways. The key is that the order must be systematized when the order is routed to the floor for execution. For example, under the proposed rule change, an order would meet the requirements of the rule if a floor broker in the trading crowd received an order over the phone and at the same time had a person from his or her booth input the order electronically. The requirements of the rule also would be satisfied if someone from the upstairs trading desk called a floor broker in the trading crowd on the floor with an order, while a clerk at the upstairs trading desk was simultaneously sending the order to the floor electronically. While it is possible that the floor broker in each of these situations would receive and begin the representation of the order prior to the arrival of the electronic order, the order entered electronically would be entered and routed in a manner consistent with the record keeping obligations and the requirements of COATS.<sup>7</sup>

Currently, the deadline to implement Phase V of COATS is August 29, 2003.<sup>8</sup>

<sup>6</sup> CBOE notes that the execution or partial execution of an order has been incorporated into COATS in Phase II, and as described in Paragraph II of the formal COATS Plan that the options exchanges previously have provided to the Commission.

<sup>7</sup> The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order systemization as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the systemization of orders requirement promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

<sup>8</sup> On June 10, 2003, the Directors of the Commission's Division of Market Regulation, Office of Compliance Inspections and Examinations, and Division of Enforcement granted CBOE and the other floor-based options exchanges an extension of time until August 29, 2003, to implement Phase V of COATS.

The Exchange intends to make the proposed changes to CBOE Rule 6.24 effective not later than August 29, 2003, or such later date as authorized in writing by the Directors of the Commission's Division of Market Regulation, Division of Enforcement, and the Office of Compliance, Inspections and Examinations.

Under the proposed change to Interpretation and Policy .04, the Exchange proposes to exempt from the systematization requirement stop-limit orders as defined in CBOE Rule 6.53(c)(iv) until December 11, 2003, or such earlier time as the Exchange's order routing and execution systems (such as COMPASS, ORS, PAR) have the functionality to handle stop-limit orders. The Exchange represents that stop-limit orders as defined in CBOE Rule 6.53(c)(iv) represent a very small percentage of the types of orders sent to and executed on the Exchange. The Exchange has an active systems project that will provide the functionality to handle stop limit orders in its order routing and execution systems.<sup>9</sup>

The proposed rule change would also permit the Exchange to exempt from the systematization requirement non-multiply listed index option classes and other option classes traded exclusively on the Exchange other than equity option classes ("exempt classes"). For example, the Exchange could exempt from the systematization requirement the following option classes traded exclusively on the Exchange: the Standard & Poor's 100® index option class (OEX), the Standard & Poor's 100® index option class (SPX), options on the Dow Jones Industrial Average<sup>SM</sup> (DJX), and options on the Diamonds® (DIA). Equity option classes traded solely on the Exchange would not be exempted from the systematization requirement. Orders in exempt classes would be required to be in a legible written form approved by the Exchange. This proposed change is consistent with the current practice permitted under CBOE Rule 6.24.

The proposed rule change would also keep the current Interpretation and Policy .02(a) of CBOE Rule 6.24, which permits the use of hand signal communications on the floor to, among other things, initiate an order, cancel an order or to change material terms of an order provided that such

<sup>9</sup> In their June 10, 2003, letter to the Exchange, the Directors of the Commission's Division of Market Regulation, Office of Compliance Inspections and Examinations, and Division of Enforcement also granted CBOE an extension of time until December 11, 2003, so that CBOE can modify its order routing and execution systems such that they would have the functionality to handle stop-limit orders.

communications are immediately thereafter relayed in written form, except in certain classes exempted by the Exchange. The proposed rule change would require that such communications be relayed immediately in electronic form rather than written form, unless an option class is exempted from this requirement. Currently, as provided in Interpretation and Policy .02(b) of CBOE Rule 6.24, the Exchange exempts the OEX, SPX, and DJX option classes, which are non-multiply listed index option classes. The Exchange proposes to amend subparagraph (b) of Interpretation .02 to state it may exempt non-multiply listed index and other option classes traded exclusively on the Exchange other than equity option classes under this Interpretation. The Exchange will publish via regulatory circular those options classes that it has exempted under Interpretation .02.

Finally, the Exchange has added a new Interpretation and Policy .05 to CBOE Rule 6.24, which states that accommodation liquidations as defined in CBOE Rule 6.54 are exempted from the systematization requirement.

## 2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by electronically enhancing the audit trail for orders by incorporating orders into COATS. This enhanced audit trail will permit CBOE to conduct surveillance of the activity on the Exchange and reconstruct markets in a more efficient and effective manner.

### *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 not necessary or appropriate in furtherance of the purposes of the Act.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

*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, as amended, 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 Section. 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-2003-18 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-20126 Filed 8-6-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48274; File No. SR-NASD-2003-102]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Modifying Interpretive Material 4613 To Provide a New Approval Process for Authorizing Computer Generated Quoting**

August 1, 2003.

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 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. Nasdaq amended the proposed rule change on July 17, 2003.<sup>5</sup> 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**

Nasdaq proposes to modify Interpretive Material 4613 ("IM 4613"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See July 17, 2003 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided new rule language that completely replaces and supersedes the original proposed rule language, and made corresponding changes to the description of the rule in the notice. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 17, 2003, the day Nasdaq filed Amendment No. 1.

**IM-4613. Autoquote Policy**

(a) No change.

(b) No change.

(c) Computer Generated Quoting—

(1) Definition—"Computer Generated Quoting" means the practice of effecting, without a physical entry, a quote update that is not designed to keep a market maker's quote away from the Nasdaq and/or national best bid/best offer, but does not include the activity set forth in subparagraph (b) of this interpretive material.

(2) Prohibition—The prohibitions against autoquoting contained in paragraph (a) of this interpretative material shall also apply to the practice of Computer Generated Quoting unless the market maker [meets the conditions in] *obtains Nasdaq's prior approval, pursuant to* subparagraph (c)(3) of this interpretive material, *to engage in Computer Generated Quoting and such approval has not been revoked or otherwise withdrawn.*

(3) Exception—A market maker may *request approval to* engage in the practice of Computer Generated Quoting [if the market maker: prior to engaging in such activity provides Nasdaq a description of its Computer Generated Quoting system; requests and obtains written interpretive relief from Nasdaq staff stating that the market maker's Computer Generated Quoting system is permissible under Interpretive Material 4613; and complies with terms that are set forth in the interpretive relief.] *by submitting to Nasdaq a completed application in the form prescribed by Nasdaq and by agreeing, in the form prescribed by Nasdaq, to notify Nasdaq at least five business days in advance of any changes to the information previously provided, to comply with the terms of this Interpretive Material 4613, and to abide by any additional conditions related to Computer Generated Quoting, which Nasdaq may impose from time to time. A properly completed application is deemed approved at close of business on the fifth business day after the day on which it is received by Nasdaq unless Nasdaq notifies the applicant by e-mail or fax that the application has been denied; provided, however, that any approval deemed granted hereunder may be withdrawn by Nasdaq at any time and is subject to any and all terms, conditions and limitations that Nasdaq may impose from time to time. [In establishing terms of the interpretive relief,] Nasdaq may reject an application, impose conditions or revoke a previously granted approval: (i) In furtherance of applicable laws or NASD rules, (ii) in order to protect the*

<sup>12</sup> 17 CFR 200.30-3(a)(12).