available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR–CBOE–2003–38 and should be submitted by October 21. 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24751 Filed 9–29–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48524; File No. SR–CBOE–2003–34]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifying the Designated Primary Market-Maker Membership Ownership Requirement

September 23, 2003.

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 11, 2003, 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 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 modify the Designated Primary Market-Maker (''DPM'') membership ownership requirement. The proposed rule text follows:

(Additions are *italicized*)

**Chicago Board Options Exchange, Incorporated**

**Rules**

* * * * *

Rule 8.85(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM. For purposes of this Rule, a trading location is defined as any separate identifiable unit of a DPM organization that applies for and is allocated option classes by the appropriate Allocation Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. The same Exchange membership(s) may not be used to satisfy this ownership requirement for different DPM organizations or different trading locations operated by the same DPM organization. Each DPM shall have until May 12, 2003 to satisfy this ownership requirement, but each DPM organization must continually own at least one membership until that date.

* * * *Interpretations and Policies:*

*.04 A DPM organization shall be deemed to own an Exchange membership for purposes of paragraph (e) of this Rule if a natural person owner of the DPM organization owns an Exchange membership that would otherwise qualify under paragraph (e) and such individual meets the following criteria: (1) Owns at least a 45% equity interest in the DPM organization; (2) maintains at least a 45% profit participation in the DPM organization; (3) is actively involved in the management of the DPM operation; and (4) maintains a constant presence on the Exchange trading floor as a primary DPM designee of the DPM organization.*

### 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

On August 21, 2000, the Commission approved a CBOE rule filing adopting a DPM membership ownership requirement.[3] This requirement, contained in CBOE Rule 8.85(e), provided, among other things, that each DPM must own at least one Exchange membership, and that the requirement would be deemed satisfied if a senior principal of the DPM owned the required membership (what constituted a ''senior principal'' was not defined).

On February 10, 2003, the Commission approved changes to CBOE Rule 8.85(e) to make clear that the requirements of the Rule are applicable to each DPM trading location (as opposed to each DPM organization), and to eliminate the concept that a senior principal can own a membership in place of the DPM organization.[4]

CBOE now seeks to again allow a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. More specifically, the senior principal must be a natural person owner of the DPM organization who: (i) Owns at least 45% equity interest in the DPM organization; (ii) maintains at least a 45% profit participation in the DPM organization; (iii) is actively involved in the management of the DPM operation; and (iv) maintains a constant presence on the Exchange floor as a DPM designee of the DPM organization.

When CBOE first proposed the DPM membership ownership requirement, most DPMs were smaller, local operations and the owners of the DPMs were floor traders who were long-time market makers on the CBOE. Many of these individuals owned memberships (seats) and the Exchange believed that these seats should qualify for purposes of compliance with the intent of proposed CBOE Rule 8.85(e)[5] because these individuals were the primary owners of the DPMs. However, once the Rule was actually in place, a consolidation of DPMs on the trading floor had already taken place (with larger, more national firms operating multiple DPM stations more prevalent on CBOE) and the Exchange observed that some firms were asserting that non-equity employees who were nominally involved in the operation of the DPM and who happened to own seats were ''senior principals'' of the DPM for purposes of the Rule. This prompted the Exchange to eliminate the senior principal component of the Rule. Unfortunately, by eliminating the senior principal provision, certain DPM

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR–CBOE–99–37).

[4] *See* Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR–CBOE–2002–18).

[5] CBOE states that the intent of the Rule is to ensure that DPMs maintain a long-term commitment to the Exchange.

organizations that are largely owned and managed by individual seat owners, were no longer able to satisfy the provisions of the Rule despite the fact that their seat ownerships previously complied and were originally intended to count towards compliance with the Rule when it was originally proposed.

As proposed, the revised rule would allow an individual seat owner who has a significant ownership and profit interest in a DPM organization (*i.e.*, at least 45%), and who is actively involved in the management of the DPM operation and maintains a constant presence on the trading floor as a DPM designee, to use his seat to comply with the requirements of the Rule. CBOE notes that, for purposes of the proposed rule, a ''constant presence'' would not mean every minute of every trading day, but rather that the individual is primarily working on the trading floor as a DPM designee.

2. Statutory Basis

The Exchange believes the proposed rule change will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Accordingly, the CBOE believes it is consistent with section 6(b) of the Act, [6] in general, and further the objectives of section 6(b)(5) in particular,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

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

This proposed rule change does not 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*

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. 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 the file number in the caption above and should be submitted by October 21, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–24756 Filed 9–29–03; 8:45 am]

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[6] 15 U.S.C. 78f(b).

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

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–48530; File No. SR–ISE–2003–15]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the International Securities Exchange, Inc. Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

September 24, 2003.

On May 29, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide that the Options Clearing Corporation (''OCC'') will have no liability to ISE Members, with respect to the use, non-use, or inability to use the Options Intermarket Linkage (''Linkage''). The ISE filed Amendment No. 1 to the proposal on July 30, 2003.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.[4] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of section 6(b) of the Act [6] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 notes that the ISE, along with the other exchanges that are Participants in the Linkage Plan, entered into an agreement with the OCC, which operates the central core or ''hub'' to and from which all Linkage orders are routed.[8] In the Agreement, the ISE committed to file a proposed rule change with the Commission that would limit the liability of the OCC to ISE

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange submitted a technical correction to clarify that the proposed rule change would establish ISE Rule 1905.

[4] Securities Exchange Act Release No. 48321 (August 12, 2003), 68 FR 49829.

[5] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

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

[8] Linkage Project and Facilities Management Agreement (''the Agreement'') (January 30, 2003).