

FUCOs, is equal to 50% of the consolidated retained earnings of AEP determined in accordance with rule 53 ("New Investment Limit"). AEP also proposes to extend its authority to issue and sell debt and equity securities, to extend the authority of Resources and the Project Parents to acquire the securities of new Project Parents, and to extend the authority of AEP, Resources and the Project Parents to guarantee securities, to December 31, 2000. Finally, AEP proposes that the Commission release its reservation of jurisdiction over the issuance and sale by AEP of the Stock.

By orders dated December 1, 1993 and December 6, 1993 (HCAR No. 25936 and HCAR No. 25939) ("1993 Orders"), the Commission authorized AEP to issue and sell authorized but unissued common stock under its Dividend Reinvestment and Stock Purchase Plan or the American Electric Power Employees Savings Plan ("Plans"). The Orders stated that AEP would not use the proceeds of sales of its common stock under the Plans to acquire interests in EWGs or FUCOs.

AEP now proposes that it be authorized, subject to the New Investment Limit, to issue and sell common stock under the Plans through December 31, 2000 and to use the proceeds thereof to invest in EWGs and FUCOs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36977; File No. SR-CBOE-95-65]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Joint Account Participant Trading in Equity Options

March 15, 1996.

On October 20, 1995, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to

revise its policy regarding joint account participation in equity options. Notice of the proposal was published for comment and appeared in the Federal Register on December 7, 1995.³ No comment letters were received on the proposal. On February 28, 1996 the Exchange filed Amendment No. 1 to the proposal.⁴ This order approves the CBOE's proposal as amended.

I. Description of the Proposal

The purpose of this rule change is to revise that provision of the Exchange's policy governing joint account participant trading in equity options that currently prohibits the simultaneous representation in a trading crowd by more than one member of a joint account.⁵ Under the proposed regulatory circular, a joint account may be simultaneously represented in a trading crowd but only by participants trading in-person. All other provisions of the current regulatory circular would remain unchanged, including a prohibition against orders being entered in the crowd via a floor broker when a joint account participant is trading in the crowd in-person. The change in policy is also reflected in a deletion of one sentence from, and the addition of another sentence to, paragraph (a)(ii) of Rule 8.16, RAES Eligibility in Equity Options.

There are two reasons why the Exchange has determined to propose this change, which has been recommended by the Exchange's Equity Floor Procedure Committee. First, the change will make the policy governing joint account trading in equity options more consistent with the current policy governing index option trading, where multiple representation of orders for the same joint account is permitted by participants in the joint account trading in-person at the trading post, or by floor brokers representing the orders at the post.⁶ The policy proposed for equity

options nonetheless will remain more restrictive than the policy for index options, in that it will only permit joint representation by participants trading in-person, and will not permit multiple representation of orders for the same joint account if one or more of the orders is represented by a floor broker. The policy for index options reflects that, as a practical matter, floor broker representation is often required in index option trading crowds, where special trading practices and procedures have been adopted to deal with the special needs of these very large crowds. Since a trader from another crowd may be unfamiliar with these practices, he may need to use the services of a floor broker who is regularly present at the index crowd and who understands its trading practices. Smaller equity option trading posts do not present the same practical need for the services of floor brokers, which is why the proposed policy permitting joint account representation at equity option posts is limited to in-person representation of orders by market-makers.

A second reason why the Exchange has chosen to institute this policy is to ensure that member organizations that choose to employ a joint account for their Exchange trading, rather than using individual market-maker accounts, are not disadvantaged in participating in trades vis-a-vis those member organizations that do employ individual market-maker accounts. Some member organizations choose to have their various market-makers trade in a joint account so that the member organization's positions can be more easily monitored and managed. Under the current equity policy regarding joint accounts, however, these member organizations would only be able to be represented by one joint account participant in a trading crowd at one time. On the other hand, the member organization using the individual market-maker accounts would be able to be represented by each market-maker's individual account. The proposed change would eliminate the disadvantage currently suffered by member organizations using joint account structures.

In addition to revising the regulatory circular, one sentence will be deleted from, and another sentence added to, Rule 8.16(a)(ii). This rule currently prohibits more than one joint account participant from using the joint account for trading on RAES in a particular option class unless the Exchange's

³ See Securities Exchange Act Release No. 36534 (November 30, 1995), 60 FR 62913 (December 7, 1995).

⁴ In Amendment No. 1 the CBOE revises the proposed regulatory circular to make clear that it will be a member's responsibility to ensure that they do not trade in-person or enter orders through floor brokers such that a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction. See Letter from Timothy Thompson, Senior Attorney, CBOE to James McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated February 28, 1996 ("Amendment No. 1").

⁵ This policy is set forth in Regulatory Circular RG 93-50, which is a reissuance of RG 91-68, File No. SR-CBOE-91-48, noticed in Securities Exchange Act Release No. 30334 (February 4, 1992), 57 FR 4900 (February 10, 1992).

⁶ See Regulatory Circular RG 95-64, which is a reissuance of Regulatory Circular RG 91-57,

approved in Securities Exchange Act Release No. 31174 (September 10, 1992), 57 FR 42789 (September 16 1992).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

Market Performance Committee ("MPC") provides an exemption. However, because any joint account participant trading in-person would be entitled to participate in the same side of a trade with his fellow joint account participants in the same trading crowd as a result of the proposed regulatory circular,⁷ the Exchange believes it is appropriate to no longer require an exemption from the MPC to have more than one participant use the joint account for trading on RAES. In any event, to participate on RAES, a member must be present in the trading crowd.

II. 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, and, in particular, the requirements of Section 6(b)(5)⁸ in that it will help remove impediments to a free and open securities market and facilitate transactions in securities, while protecting investors and the public interest.

Specifically, the Commission believes that it is appropriate for the CBOE to modify certain joint account trading policies for equity options while keeping restrictions in place that are designed to ensure market integrity. First, the rule change will make the policy governing joint account trading in equity options more consistent with the current policy regarding index option trading. The Commission notes that the CBOE's policy regarding equity option trading will continue to be more restrictive than that governing index option trading in that only joint representation by participants trading in person will be permitted in equity option trading crowds. Multiple representation of orders for the same joint account in equity option trading crowds will not be permitted if one or more of the orders is represented by a floor broker.

Second, the change in policy will eliminate the disparity in treatment between member organizations that choose to employ a joint account for their exchange trading, and those member organizations which use individual market-maker accounts. Member organizations which choose to have their various market-makers trade in a joint account so that the member organization's positions can be more easily monitored and managed, would

no longer be disadvantaged by only having a single joint account represented in a trading crowd at one time. Thus, by eliminating a distinction that currently exists between member organizations that manage their positions differently, the rule change furthers the objectives of Section 6(b)(5) of the Act by providing rules that perfect the mechanisms of a free and open market.

With respect to protecting investors and the public interest, the Commission notes that the CBOE's proposed regulatory circular contains provisions designed to ensure that joint account participants do not engage in abusive or illegal trading, thereby ensuring the maintenance of fair and orderly markets and market integrity. As mentioned above, the proposed circular provides that members are prohibited from entering orders in a particular crowd with floor brokers for their individual or joint account whenever they are trading in-person in that crowd; this applies even though the orders are for an account they are not then actively trading. Additionally, the regulatory circular states that "[i]t is a member's responsibility to ensure that they do not trade in-person or enter orders with floor brokers such that any of the following results: (1) A trade occurs between a joint account participant's individual account and the joint account of which he or she is a participant, (b) a trade occurs between two joint accounts that have common participants, or (c) a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction."⁹ Finally, the Commission notes that the CBOE has surveillance procedures designed to detect and deter abusive trading by joint account participants.¹⁰

Accordingly, the Commission believes that expanding the ability of joint account participants to trade in equity options classes in limited circumstances will not threaten the integrity of CBOE's market.

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of the notice of filing thereof in the Federal Register

Specifically, Amendment No. 1 merely clarifies the regulatory circular to highlight that members must ensure that they do not trade in-person or enter orders with floor brokers such that a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of the transaction. The Commission believes that emphasizing this requirement in the regulatory circular clarifies the responsibilities of joint account participants trading in equity options and strengthens the market integrity aspects of the proposal.

Based on the above, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change on an accelerated basis and believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. 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. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-95-65 and should be submitted by April 12, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-95-65), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁷ Pursuant to Interpretation .06 to CBOE Rule 8.9 ("Securities Accounts and Orders of Market Makers"), joint account participant trading on opposite sides of a transaction is prohibited.

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Amendment No. 1, *supra* note 4.

¹⁰ Based on conversations with its Equity Floor Procedure Committee, the Exchange believes that the change in policy is not likely to result in one joint account dominating, or "packing," an equity option trading crowd through the use of multiple joint account participants. Telephone conversation between Patricia L. Cerny, Director, Market Regulation, CBOE and James McHale, Attorney, OMS, Division, Commission, on March 14, 1996.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR. 200.30-3(a)(12).