

brokerage. The Commission does not believe the elimination of Rule 14.6 will adversely effect the quality of execution by floor brokers of customer orders. Specifically, the Commission notes that the CBOE has other rules that require floor brokers to use due diligence in executing Order.¹² In addition, the floor broker executing the trade is required to place his or her acronym on the trade ticket,¹³ ensuring that the executing floor broker can be identified and held accountable for the handling of the trade. The elimination of Rule 14.6 should aid in the orderly flow of the market in that it enables floor brokers to assist each other in handling order flow on a more regular basis without penalty. The Commission also notes that at least several other exchanges currently do not have rules forbidding the arrangements covered by Rule 14.6, with no observed abuses in this area.¹⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-CBOE-96-63) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38375; File No. SR-CBOE-97-14]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Incorporated; Notice of Filing of
Proposed Rule Change Relating to the
Transfer of the Options Business of
the New York Stock Exchange to the
Chicago Board Options Exchange**

March 7, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on March 3, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" and "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**

CBOE proposes to amend its Constitution and Rules in order to authorize the issuance of options trading permits ("Permits") in connection with the proposed transfer of the options business of the New York Stock Exchange, Inc. ("NYSE") to CBOE. CBOE also proposes to define the rights and obligations associated with Permits, and to provide for the trading of options on the NYSE Composite Index.²

**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**

The purpose of the proposed rule change is to authorize the issuance of 75 "Options Trading Permits" ("Permits") in connection with the proposed transfer of the NYSE's options business to CBOE, and to define the rights and obligations associated with such Permits.³ In addition, the proposed rule change amends CBOE rules as necessary to provide for the trading on CBOE of options on the NYSE Composite Index. The 75 Permits are proposed to be issued pursuant to the terms of an agreement between CBOE and NYSE. The agreement represents the culmination of a process initiated by NYSE in the summer of 1996 when it announced that it intended to discontinue its options business. At that time, NYSE invited interested parties wishing to continue NYSE's options business to bid for its acquisition by offering trading rights and other benefits to NYSE members, including payment for the "going business" value of the business to be acquired. Based on its bid

in response to NYSE's invitation, NYSE determined to enter into exclusive negotiations with CBOE. A definitive agreement between CBOE and NYSE ("Agreement") was executed as of February 5, 1997.⁴

The Agreement contemplates that trading in NYSE Options will commence on the CBOE trading floor on April 28, 1997 ("Effective Date"), subject to the fulfillment of specified conditions and the approval of this proposed rule change and the parallel filing by NYSE.⁵ The Agreement provides that CBOE will pay \$5,000,000 as the purchase price for the business to be transferred, of which \$1,200,000 will be retained by NYSE to cover its costs associated with the termination of its options activities and as payment for a ten-year license granted to CBOE to enable it to trade options on the NYSE Composite Index, and \$3,800,000 net of a tax reserve will be distributed pro rata to all NYSE members. Details of the cash distribution to NYSE members are described in Item 3 of the parallel proposed rule change filed by NYSE.

The Agreement also provides that CBOE will issue up to a total of 75 Permits to those NYSE specialist and non-specialist firms and sole proprietors who operated pursuant to options trading rights on NYSE on December 5, 1996, and who agree to transfer their options activities to CBOE. In the case of an NYSE specialist, the specialist firm may select any qualified person to act as its nominee on CBOE. In the case of a non-specialist, the individual acting pursuant to an options trading badge on NYSE on December 5, 1996, must personally relocate to Chicago in order to receive a Permit. If less than 75 Permits are issued to NYSE specialists and non-specialists, the Agreement provides that the difference between 75 Permits and the number of Permits so issued will be deposited in a lease pool to be leased to qualified persons who wish to trade NYSE Options on CBOE. The proceeds from the lease of these Permits will be paid to certain designated persons who help options trading rights on NYSE, as described below.

The issuance of 75 Permits is proposed to be authorized pursuant to a new Section 2(e) to the Exchange's

⁴ A copy of the Agreement is attached as Exhibit B to this filing and is available for review at the Office of the Secretary of CBOE, and in the Public Reference Room of the Commission.

⁵ "NYSE Options" are defined as those classes of options that were traded on NYSE immediately prior to the Effective Date and not then also traded on CBOE, and those classes of options on at least 14 additional underlying stocks which CBOE has agreed to designate as NYSE Options during each of the seven years following the Effective Date.

¹² See *supra* note 10.

¹³ See DBOE Rule 6.51 Reporting Duties.

¹⁴ See *supra* note 11.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² The text of the proposed rule change is available at the Office of the Secretary, CBOE and in the Public Reference Room of the Commission.

³ On March 3, the NYSE filed with the Commission a proposed rule change, SR-NYSE-97-05, regarding the transfer of the NYSE options business to the CBOE.

Constitution. That section provides that all Permits expire on the seventh anniversary of the date when trading begins on the floor of CBOE in NYSE Options. It also specifies that Permit holders shall have none of the rights of members except as specified in the Rules of the Exchange.

The rights and obligations of holders of Permits are set forth in proposed new Exchange Rule 3.27, which incorporates by reference many of the other rules of the Exchange pertaining to the rights and obligations of Exchange members generally. Subparagraph (a)(1) of Rule 3.27 reflects the terms of the Agreement by providing that NYSE non-specialist firms and sole proprietors who were engaged in business on the options floor of NYSE immediately prior to the Effective Date are entitled to the same number of Permits as the number of options floor badges they held on NYSE on December 5, 1996, but that each individual who held an NYSE options floor badge and acted as a non-specialist must personally relocate to Chicago in order to be entitled to a Permit in respect of that badge. Subparagraph (a)(2) provides that each specialist firm engaged in business on the options floor of NYSE is likewise entitled to the same number of Permits as the number of options floor badges they held on NYSE, and that, subject to the rules of CBOE, each such firm may designate any qualified person to be the firm's nominee on CBOE.

Subparagraph (a)(3) of Rule 3.27 describes the terms of the lease pool pursuant to which any of the 75 Permits not issued to NYSE members active on the NYSE options floor, or any so issued but subsequently surrendered, will be leased by CBOE through an auction or other competitive process. The lease proceeds would ordinarily be paid to those person identified by NYSE as having used or leased NYSE options trading rights on December 5, 1996, or holders of options trading rights that, while not so used or leased, were formally separated from their NYSE memberships on that date, or transferees of such persons.

Subparagraph (a)(4) of Rule 3.27 provides that if a Permit issued to a NYSE options badge holder is not used during the first year following the Effective Date, the Permit shall be surrendered and shall be added to the lease pool described above, unless the inactivity of the Permit has been consented to by CBOE.

Subparagraph (a)(5) of Rule 3.27 provides that Permits issued to NYSE options badge holders pursuant to subparagraphs (a) (1) and (2) are not transferable for one year following the

Effective Date, except as consented to by the Exchange in the event of death, hardship or certain successions in ownership. Following this one year period, Permits are freely transferable in accordance with Exchange rules governing the transfer of memberships generally.

Paragraph (b) of Rule 3.27 describes the trading rights to which the holder of a Permit is entitled. In general, these include the right to be admitted to the separate CBOE trading facility devoted exclusively to the trading of NYSE Options, as defined in the Rule,⁶ and to engage in the activities of a Market-Maker, Designated Primary Market-Maker ("DPM") and/or Floor Broker in respect of those options, subject to the applicable rules of the Exchange. In addition, the holder of a Permit is entitled to trade by order as principal those classes of options traded on CBOE's regular trading floor that were dually traded on both CBOE and NYSE immediately prior to the Effective Date. Permit holders are also entitled to trade by order as principal all other classes of options traded on CBOE's regular trading floor, provided that such trades during any calendar quarter (as measured by contract volume) do not exceed twenty percent of the sum of the Permit holder's total in person principal trades in NYSE Options and the Permit holder's principal trades by order in options that were dually traded on both CBOE and NYSE immediately prior to the Effective Date. Finally, a Permit holder is entitled to be admitted to the regular options trading floor in order to respond to the call of a Board Broker or Order Book Official for additional market-makers pursuant to Exchange Rule 7.5.

Paragraph (c) of Rule 3.27 provides that each NYSE specialist firm to which a Permit is issued will be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE, subject to qualifying to act as such pursuant to CBOE rules. Paragraph (c) also provides that the DPMs for the additional classes of NYSE Options designated each year shall be chosen from among Permit holders. Subject to the rules of the Exchange, specialist firms appointed as DPMs in NYSE Options shall be entitled to continue to act as such during the term of the Permits, and thereafter it they become regular members of the Exchange.

Paragraph (d) of Rule 3.27, together with Section 2(e) of the Exchange Constitution, provides that Permit holders shall have the same rights and

obligations of members, except that they shall have no right to petition or vote or to be counted as part of a quorum at meetings of members, they shall have no interest in the assets or property of the Exchange, they shall not share in any distribution by the Exchange, they shall not participate in the Exchange's member death benefit program, and they shall not have the right to transact business with the public in any securities dealt in on the Exchange other than NYSE Options. Holders of Permits may serve on any committee of the Exchange to which they are appointed, and are deemed to be appointed market-makers in all classes of NYSE Options pursuant to Exchange Rule 8.3.

Paragraph (d) also provides that membership application fees shall be waived in connection with the approval of Permit holders or their nominees in connection with the original issuance of a Permit but not the subsequent transfer or lease of a Permit, and shall also be waived in connection with the approval of the initial holder or its nominee as a regular member of the Exchange or as the nominee of a regular member. Membership or nominee applications made by Permit holders or their nominees who are not subject to a statutory disqualification and are not the subjects of a self-regulatory organization investigation that may involve their fitness for membership shall be deemed effective for a temporary period of six months, so as not to interrupt their Exchange activities while their applications are being processed.

It is also proposed to amend certain of the rules in Chapters XXIV and XXIVA of the Rules of the Exchange, which govern the trading of index options and FLEX options, respectively, in order to provide for the listing and trading of options on the NYSE Composite Index. (Hereafter, such index is referred to as the "Index" and such options as "NYA Options".) The Index is a capitalization-weighted index comprising all of the over 2,500 common stocks listed on NYSE. The Index is expressed in relation to the base period market value which has been adjusted for capitalization changes over time. The base value of the Index was set at 50 on December 31, 1965. NYSE will continue to act as the reporting authority for the Index, and CBOE will trade NYA Options pursuant to a license granted by NYSE.

As traded on NYSE and as proposed to be traded on CBOE, NYA Options are European-style, A.M.-settled index options, strike prices for which are introduced at \$2.50 or \$5.00 intervals for strike prices below \$200 or at or

⁶ Supra note 6.

above \$200, respectively. The Index Multiplier for NYA Options is \$100. CBOE proposes to apply to NYA Options the same 45,000 contract position and exercise limits (no more than 25,000 contracts expiring in the nearest expiration month) and the same hedge exemption that currently apply to such options under NYSE rules. In addition to regular index options, CBOE proposes to provide for trading in Quarterly Index Expiration options ("QIX" options), long-term and reduced-value long-term options ("LEAPs" and "reduced-value LEAPs") and A.M.-settled FLEX Options on the Index pursuant to the same rules and procedures that currently govern trading on CBOE in these types of options.

In addition, the proposed rule change includes a few corrections to the table of position limits set forth in Rule 24.4 in order to add references to classes of index options that were inadvertently omitted from the table when it was last revised, and a few clarifications to the language of Rule 24A.4(b) concerning the specification of the exercise settlement values for FLEX Index Options. No substantive changes will result from these corrections and clarifications.

CBOE believes that it has adequate facilities and resources to provide for the trading, surveillance and data dissemination called for by the transfer of the NYSE options business to its market. In this connection, CBOE intends to construct a new trading facility dedicated solely to NYSE Options, which will be configured and equipped in the same manner as its existing trading floor. The surveillance and regulatory responsibilities resulting from the transfer of the NYSE options business to CBOE are not expected to add significantly to CBOE's existing regulatory workload, and CBOE believes it has adequate resources to assume these added responsibilities. CBOE intends to add one additional output line to the OPRA processor for purposes of transmitting market information pertaining to NYSE Options. This will not increase the total input to OPRA because two lines from NYSE to the OPRA processor will be terminated at the time of the transfer to CBOE.

CBOE believes that the proposed rule change is consistent with and in furtherance of the provisions of Section 6(b)(5) of the Securities Exchange Act of 1934 because, by permitting those NYSE members who have been engaged in options activities on NYSE to continue to conduct an options business in CBOE's regulated exchange marketplace, the proposed rule change 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 a national market system, and to protect investors and the public interest.

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. Instead, by providing a framework within which all of the members of NYSE who have been active in NYSE's options business may continue to conduct that business on CBOE, the proposed rule change is intended to strengthen the ability of those members to compete with other markets that may also wish to trade the options formerly traded on NYSE. In this regard, CBOE understands that early in 1996, NYSE determined to continue its options business regardless of whether it would be able to transfer that business to CBOE or to any other market. NYSE's effort to transfer its options business to another market was made largely in order to provide a home for those of its options members who wished to continue in the options business, as evidenced by NYSE's emphasis on trading rights for its members in its request for bids for the acquisition of its options business.

The terms governing the transfer of NYSE's options business to CBOE impose no restrictions on the ability of NYSE to resume options trading at any time, except that if NYSE were to resume trading options within one year following the Effective Date, it would have to pay CBOE \$500,000 to offset a small portion of CBOE's costs associated with the transfer. Nor are any restrictions imposed on NYSE members that would limit their ability to trade options on NYSE if that exchange were to resume its options trading program. CBOE notes that any other securities market is also free at any time to trade any or all of the options formerly traded on NYSE, other than NYA Options, which will be exclusively licensed to CBOE.

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 thirty-five 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 ninety 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. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 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 File No. SR-CBOE-97-14 and should be submitted by April 7, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38376; File No. SR-NYSE-97-05]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change Relating to the Agreement Transferring the New York Stock Exchange Options Business to the Chicago Board Options Exchange

March 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁷ 17 CFR 200.30-3(a)(12).