

8. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company. Applicants assert that the Non-Money Market Funds, by purchasing shares of the Money Market Funds, the Money Market Funds, by selling shares to Non-Money Market Funds, and the Adviser, by managing the proposed transactions, could be deemed to be participants in a joint arrangement.

9. Rule 17d-1 under the Act permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from, or less advantageous than, that of other participants. Applicants assert that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of other participants and that the transactions will be consistent with the purposes of the Act.

#### **Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Rules of Conduct).

2. If the Adviser collects a fee from a Money Market Fund for acting as its investment adviser with respect to assets invested by a Non-Money Market Fund, before the next meeting of the board of trustees of a Non-Money Market Fund that invests in the Money Market Funds ("Board") is held for the purpose of voting on an advisory contract for the Non-Money Market Fund under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory contract attributable to, managing the assets of the Non-Money Market Fund that can be expected to be invested in such Money Market Funds. Before approving any advisory contract under section 15, the Board, including a majority of the

trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the fee indirectly paid by the Non-Money Market Fund because of the advisory fee paid by the Money Market Fund to the Adviser. The minute books of the Non-Money Market Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Non-Money Market Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions and policies set forth in its prospectus and statement of additional information.

5. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Each Non-Money Market Fund, Money Market Fund, and any future Fund that may rely on the requested order will be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-41599; File No. SR-CBOE-99-20]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System**

July 6, 1999.

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 May 21, 1999, 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 amend Rule 6.2A, *Rapid Opening System*, which governs the operation of the Exchange's Rapid Opening System, to allow for two Floor Officials to adjust effected trades in cases where an underlying stock has been opened at an erroneous price and later corrected on the underlying market. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

#### **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 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 Exchange proposes to add subparagraph (a)(iii) to CBOE Rule 6.2A to provide that two Floor Officials may adjust trades executed through the Exchange's Rapid Opening System ("ROS") when the primary market for the underlying has opened a security at an erroneous price and then later corrects that opening price.

In the period of time since CBOE Rule 6.2A was approved by the Commission on a pilot basis,<sup>3</sup> the Exchange has had a very positive experience with ROS. ROS has enabled the Exchange to open classes of options within seconds of the opening of the underlying security thus,

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

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

<sup>3</sup> Securities Exchange Act Release No. 41033 (February 9, 1999) 64 FR 8156 (February 18, 1999).

enabling firms and customers to enter orders in open trading almost immediately after the opening bell. In those classes where it has been employed, ROS additionally has prevented backlogs of orders from developing during the opening. During the time ROS has been employed on the floor, there have been a very few instances, however, where ROS has opened the option class at a price based upon an erroneous opening price of the underlying security disseminated by the primary market which is later corrected by the primary market only after ROS had opened the option class.<sup>4</sup>

In those instances where ROS has opened on an erroneous print, staff of the Exchange has had to expend a substantial amount of time working with the participants in the trades to get their agreement to adjust the trades and to determine which customer orders should have been filled on the opening. The staff has had to work to get the parties to the trade to agree before the trades have been adjusted. The market-makers in the particular class where ROS is employed have suffered significant deleterious financial consequences from these openings on an erroneous print because, under the current circumstances, only those market-maker trades that occurred at a price that disfavored a customer will be adjusted while the market-makers will retain those trades done at a price that favored a customer. As a result, the Exchange believes market-makers may become discouraged from participating in ROS because, even though the expected incidences where an erroneous print occur are rare, the financial consequences to a particular market-maker can be substantial.

It should also be noted that when ROS is opened based upon an incorrect price of the underlying there are customer orders that are not being filled that might otherwise have been filled had ROS opened at the correct price. Also, there are customer to customer trades that will be executed at a price based upon an incorrect underlying price. Floor Officials would have the authority to assign trades for these customers to market-makers in the crowd as well and to adjust the execution price of the customer to customer trades. Floor Officials would use their judgment to adjust trades as necessary to maintain a fair and orderly market.

After these problems first occurred, Exchange staff has educated trading

crowds about methods that they may employ to help prevent these problems from occurring in the future. For example, the trading crowds may wait to send their AutoQuote values until after the initial bid/ask quotes on the underlying are disseminated to ensure that the initial disseminated opening price for the underlying security is in line with the bid/ask quotes. Also, a system enhancement has been put in place that will provide an indication to crowds when ROS is being opened at a price that appears erroneous. There is no guarantee that these methods can prevent every occurrence where a class is opened on ROS at an erroneous price. The Exchange believes therefore, it is necessary to grant Floor Officials the authority to adjust opening trades in the event that the class is opened at an erroneous price. This authority is similar to the authority Floor Officials currently have with respect to RAES trades.<sup>5</sup> The Exchange believes this change will prevent market-makers from becoming discouraged from participating on ROS and will save time spent by Exchange staff negotiating with participants on trades that occur on erroneous prints. At the same time the rule change will give Floor Officials the authority to determine which trades should be adjusted so that a fair and equitable result is achieved for all market participants, including those customers that might not have been filled on the opening but who might have been had the class been opened at the correct price.

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of Act in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

#### *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, 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 the CBOE. All submissions should refer to File No. SR-CBOE-99-20 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>4</sup> Because ROS employs the Exchange's AutoQuote system and the Exchange's AutoQuote system relies on feed of the underlying to determine the option's price, an inaccurate underlying price can lead to an inaccurate ROS opening price.

<sup>5</sup> CBOE Rule 6.8(a)(ii) states in part: "A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval."

<sup>6</sup> 17 CFR 200.30-3(a)(12).