

arguments concerning Amendment No. 3, including whether Amendment No. 3 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. 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 Amex. All submissions should refer to File No. SR-Amex-99-13 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Amex-99-13), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41782; File No. SR-CBOE-99-17]

Self-Regulatory Organizations; Notice of Filing of Amendment #2 and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

August 23, 1999.

I. Introduction

On April 16, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 amending the CBOE's rules governing the operation of its Retail Automatic Execution System ("RAES"). On May 21, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposal.³ Today, the CBOE filed Amendment No. 2 to the proposal.⁴

a. The Initial Proposal

The proposal as amended by Amendment No. 1 ("Initial Proposal") seeks to increase the maximum order size of certain RAES-eligible options from 20 to 50 contracts. It also contains provisions relating to the authority of the CBOE Floor Procedure Committees ("FPCs") to change RAES order assignment procedures (including the authority to implement a procedure called "Variable RAES," described below) and improve the execution price of RAES orders in multiple listed options to match a better price on another market. Notice of the Initial Proposal was published in the **Federal Register** on June 17, 1999.⁵ The Commission received no comments on the proposal. The proposal is pending with the Commission.

b. The Current Amendment

Amendment No. 2 ("Current Amendment" or "Proposed Rule Change") will permit the CBOE to immediately implement a new order assignment procedure called "Variable RAES" for CBOE options transactions in five stocks that are dually listed on both the Philadelphia Stock Exchange ("Phlx") and the CBOE. Those stocks are Dell Computer Corporation ("DLQ"), International Business Machines ("IBM"), Johnson & Johnson ("JNJ"), Coca-Cola ("KO"), and Ford Motor Company ("F"). The Current Amendment was filed in tandem with a related rule proposal, SR-CBOE-99-47, which increases the maximum RAES order size from 20 to 50 contracts in options on those five stocks only. SR-CBOE-99-47 becomes effective today. The CBOE seeks immediate Commission approval of the Current Amendment so that Variable RAES can be used today, when the new order size maximum on the five dually traded options goes into effect.

² 17 CFR 240.19b-4.

³ See letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999 ("Amendment No. 1").

⁴ See letter from Christopher R. Hill, Attorney, CBOE, to Michael Walinskas, Associate Director, Division of Market Regulation, SEC, dated August 23, 1999 ("Hill Letter").

⁵ See Securities Exchange Act Release No. 41501 (June 9, 1999), 64 FR 32568.

II. Description of the Proposal

Under former procedures, RAES orders were randomly assigned to market makers, and each market maker had to buy or sell the entire order assigned to him or her. By contrast, Variable RAES as implemented in the Current Amendment will enable market maker to designate a maximum number of contracts he or she is willing to buy or sell when a RAES order for any of the five dually listed options is assigned to that market maker.⁶ The CBOE represents that, "[w]ith a higher size limit for RAES orders, this flexibility to choose their own maximum participation in any one RAES trade will encourage more market makers to participate in RAES, since it will give them greater control over the risks they take by participating in RAES."⁷

III. Discussion

We believe that accelerated approval of Variable RAES for the five dually listed options is appropriate for three reasons. First, it allows RAES market makers to choose the level of risk they are comfortable with. This is important because the CBOE today is increasing the maximum size of orders eligible for RAES from 20 to 50 contracts in those five dually listed options, thus increasing the potential exposure of RAES market makers to risk in those options. Second, the proposal does not otherwise change the way RAES operates from a customer perspective. Third, the Commission previously published for comment the Initial Proposal, which included a much more expansive provision permitting implementation of Variable RAES for all options classes, not just the five classes at issue here. We received no comments on the Initial Proposal, and we believe the Current Amendment does not raise any new issues.

We are not now approving the textual changes to the RAES rules proposed by the CBOE in its Initial Proposal. Rather, we are continuing to work with the CBOE to address outstanding issues raised by those rules relating to the

⁶ The maximum order size selected by the market maker must be equal to or greater than a minimum order size set by the FPC. The FPC will initially set the minimum at 20 contracts per order for each of the five options covered by the Current Amendment, and may adjust that level up or down in the future for any of these options. If the FPC decides to increase the 20-contract minimum in the future, it will take into account the ability of market makers to accept the heightened risk associated with that increase. Telephone conversation between Tim Thompson, Director, Regulatory Affairs, CBOE, and Christopher R. Hill, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (August 23, 1999).

⁷ See Hill Letter, *supra* note 4, at 1.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

manner in which CBOE will be able to employ Variable RAES. Such issues relate to the degree of authority delegated to the appropriate FPCs regarding Variable RAES, and to internal governance matters. At a later time, when we have resolved these outstanding issues, we will also consider the specific changes to the text of the rules proposed by the CBOE in its Initial Proposal.

Accordingly, after careful review, the Commission finds that the Current Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the Current Amendment is consistent with Section 6(b)(5), 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, in general, to protect investors and the public interest."⁸ Moreover, the Commission finds good cause for approving the Current Amendment prior to the 30th day after the date the Amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.⁹ Specifically, the Commission finds that Variable RAES will appropriately permit RAES market makers to limit their risk to compensate for increased exposure to the larger RAES order sizes that go into effect today.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Current Amendment, including whether the Current Amendment 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 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-99-17 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the Current Amendment to SR-CBOE-99-17, be and hereby is approved on an accelerated basis.¹¹

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

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41786; File No. SR-DTC-99-17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

August 24, 1999.

On July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-99-17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on August 11, 1999.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change involves arrangements to integrate DTC and the National Securities Clearing Corporation ("NSCC"). Under the rule change, DTC and NSCC will form a New York corporation ("Holding Company") that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ In approving the Current Amendment, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 41657 (July 27, 1999), 64 FR 43795.

The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the two current stockholders of NSCC, will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.³

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")⁴ contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.⁵ Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of holding Company common stock. The Holding Company will elect as the Directors of DTC and NSCC the

³ DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

⁴ DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

⁵ 15 U.S.C. 78q-1(b)(3)(C).

⁸ 15 U.S.C. 78s(b)(5).

⁹ 15 U.S.C. 78s(b)(2).