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- ____ Performance Indicators
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 ____ Assessment
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 ____ Significance Determination Process
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[FR Doc. 99-31761 Filed 12-7-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42190; File No. SR-CBOE-99-32]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Change the Participation Entitlement of Designated Primary Market-Makers

December 1, 1999.

I. Introduction

On June 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ Rule 19b-4 thereunder,² a proposed rule change to modify the participation entitlement of designated primary market-makers ("DPMs"). The proposed rule change was published in the **Federal Register** on September 30, 1999.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A DPM's right to participate as a principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under this rule, if a DPM is first to respond with the best bid (offer) to a member who is not acting on behalf of the DPM and who has requested a market, the DPM is entitled to 100 percent participation in any resulting transaction. In addition, CBOE Rule 8.80(c)(7)(ii) grants each DPM a right to participate "pro-rata," with market-makers present in the trading crowd. This pro-rata right applies to any transaction in a security allocated to the DPM if the DPM's previously established bid (offer) was equal to the highest bid (lowest offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45.⁴

The Exchange has not previously defined the term "Pro-rata." The Modified Trading System Appointments

Committee ("MTS" Committee"),⁵ however, has interpreted a participation entitlement in transactions that occur in a DPM's allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to be as follows: an initial 40 percent participation right; a 30 percent participation right for securities with an average daily volume during the previous calendar quarter of at least 2,501 contracts; and no guaranteed participation right when the average daily volume in a security during the previous calendar quarter exceeded 5,000 contracts. In addition, the MTS Committee established a 40 percent participation level for all multiply-traded securities.

The Exchange now proposes to change the participation level. The Exchange proposes to fix the DPM participation right at 30 percent for transactions in all DPM allocated securities that occur at the DPM's previously established principal bid or offer. The 30 percent participation right would apply equally to all allocated securities regardless of their contract volume or whether they are multiply-traded.

The proposal to set the DPM participation right at 30 percent for all DPM allocated securities does not, however, affect the MTS Committee's authority to establish a lower participation right for new DPM appointments or as a remedial action against a DPM that has failed to perform satisfactorily.

III. Discussion

After careful review, the Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5)⁷ because it is designed to remove impediments to and perfect the mechanism of a free and open market.

The proposed rule change amends the Exchange's established policy relating to the level of DPM participation in transactions occurring at the DPM's previously established bid (offer) for securities allocated to the DPM. Now, instead of staggering the amount of DPM participation based on either the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 140.19b-4.

³ Securities Exchange Act Release No. 41904 (September 22, 1999), 64 FR 52813.

⁴ The right of a DPM to participate pro-rata, however, does not include trades executed on the Exchange's Retail Automatic Exchange System ("RAES").

⁵ The MTS Committee is responsible for appointing DPMs and overseeing the Exchange's DPM program.

⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

security's average daily volume or its status as multiply-traded, the participation amount will be a simple fixed percentage. Each DPM will be entitled to the same participation amount regardless of the security's volume or status.

The Commission agrees with the Exchange's assertion that the proposal should foster a more equitable result than under the current staggered approach. Now, all DPMs will be entitled to the same amount of participation regardless of the security. Moreover, the fixed percentage should be easier to apply than the current formula. Therefore, the proposal should improve the operation of the DPM program.

The Commission notes that the DPM participation right was established as an incentive to spark interest in the DPM program and to entice DPMs to remain in the program. This purpose is still valid today as the DPM program expands floor-wide. DPMs assume additional affirmative obligations, which are not required of other members. These additional obligations include, among other things, the obligation to be present at the trading post throughout the business day, the obligation to participate at all times in automated execution and order handling systems such as RAES, and the obligation to act as an order book official and maintain the public order book. These additional obligations are required of all DPMs regardless of the volume or multiply-traded status of the DPM's allocated security and, thus, the Exchange's proposal to establish a flat participation entitlement appears reasonable and fair.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-99-32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

[FR Doc. 99-31779 Filed 12-7-99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42186; File No. SR-CBOE-99-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Customer Communications

November 30, 1999.

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 June 18, 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 Exchange. 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 Exchange Rule 9.21, *Communications to Customers*, which governs communications from member firms to customers or members of the public. The proposed rule change would permit the use of non-standard worksheets, provided that such worksheets meet the requirements applicable to sales literature, pursuant to Exchange Rule 9.21. 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

1. Purpose

Exchange Rule 9.21, *Communications to Customers*, governs communications between Exchange members and their customers and other members of the public. The Exchange, along with the other options exchanges, has published *Guidelines for Options Communications* ("Guidelines")³ to explain the customer communications rules of the options exchanges and the interpretations of these rules. Following the recommendations of the Commission's Special Study of the Options Markets, the CBOE and other self-regulatory organizations amended their rules to require uniform options worksheets.⁴ The proposed rule change seeks to eliminate the requirement that mandates that standard forms of options worksheets be uniform within a member organization (i.e., for specific types of options and strategies).

Under existing rules, worksheets are deemed sales literature. The proposed rule change will allow a member organization, or its associated person, the ability to tailor worksheets to specific prospective or existing clients, to utilize worksheets that may be commercially available, or to use Exchange or other industry developed worksheets. The Exchange believes that this change would expand the quantity and quality of options worksheets available for member use, thereby enhancing the member's ability to adequately describe the risks and benefits of options. Of course, member organizations may decide to require within their written supervisory procedures that options worksheets be standardized within their respective organizations. So that the Exchange could ensure that worksheets fulfill their objective, worksheets would continue to be subject to the content and approval requirements of material deemed sales literature, as required by existing Exchange Rule 9.21.

2. Statutory Basis

The CBOE believes that the proposal is consistent with Section 6(b) of the

³ See Securities Exchange Act Release No. 29682 (September 13, 1991), 56 FR 47973 (September 23, 1991) (File No. SR-Amex-90-38; SR-CBOE-90-27; SR-NASD-91-02; SR-NYSE-90-51; and SR-PSE-90-41).

⁴ See Report of the Special Study of the Options Market, Chapter V, page 130 (December 22, 1978); Securities Exchange Act Release No. 15575 (Feb. 22, 1979) (Order implementing certain recommendations contained in the Commission's Special Study of the Options Market).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.