respondent is $57.68 per year, calculated as the costs of copying ($12.36) plus storage ($45.32), resulting in a total cost of compliance for the respondents of $461.44.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 7, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3369 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 14, 2000.

An open meeting will be held on Wednesday, February 16, 2000 at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, February 17, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Wednesday, February 16, 2000 is:

Consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee. For further information, contact Donald J. Gannon at (202) 942–4400.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, February 17, 2000 is:

Institution and settlement of injunctive actions; and

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 8, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–3433 Filed 2–9–00; 4:30 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–42396; File No. SR–CBOE–99

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

February 7, 2000.

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 July 29, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The proposal permits the appropriate CBOE Floor Procedure Committee (''FPC'') to implement a new order assignment procedure for the Exchange's Retail Automatic Execution System (''RAES''). The new RAES order assignment procedure is called ''100 Spoke RAES Wheel.'' On January 27, 2000, the Exchange filed Amendment No. 1 to the proposed rule change. [3] 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 its rules governing the operation of RAES, as set forth below. Proposed new language is in italics.

* * * * *

RAES Operations

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

RULE 6.8.

(a)–(g) No change.

...Interpretations and Policies

.01–.05 No change.

.06(a) In the exercises of the their authority to determine the procedure for assigning RAES-eligible orders to Participating Market-Makers for execution, the appropriate FPCs have determined that in the absence of any specified alternative assignment methodology, an assigned Participating Market-Maker is required to buy/sell the entirety of each RAES order assigned to him up to the maximum size of RAES-eligible orders in that class of options. Alternatively, the appropriate FPC may specify that some or all options classes are subject to ''Variable RAES'' *or to the ''100 Spoke RAES Wheel.''*

(b) No change.

(c) Under the ''100 Spoke RAES Wheel,'' RAES orders would be assigned to logged-in market-makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market-maker in-person agency contracts traded (excluding RAES contracts) during the review period. The review period will be determined by the appropriate Floor Procedure Committee and may be for any period not in excess of two weeks. The percentage distribution determined during the review period will be effective for the succeeding review period. On each revolution of the RAES Wheel, subject to the exceptions described below, each participating market-maker (who is logged onto RAES at the time) will be assigned enough contracts to replicate

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated January 19, 2000 (''Amendment No. 1''). In Amendment No. 1, the CBOE restricted the market maker review period for determining RAES allocations to no more than two weeks. *See* Section II.A.1.b., *infra.*

his percentage of contracts on RAES that he traded in-person in that class during the review period. A participation percentage will be calculated for each market-maker for each class that the market-maker trades. For this purpose all DPM Designees of the same DMP unit will have their percentage aggregated into a single percentage for the DPM unit.

Once a market-maker has logged onto RAES, he will be assigned contracts on the RAES Wheel until his market-maker participation percentage has been met. This may mean that multiple orders (or an order and a part of the succeeding order) will be assigned to the same market-maker on the Wheel. To understand how the RAES orders will actually be allocated to market-makers to meet those percentages, one must understand the concepts of ''spokes'' and wedges.'' A ''spoke'' is 1% of the RAES Wheel and often may be equal to one contract. The appropriate Floor Procedure Committee may determine the number of contracts that make up one spoke. Each market maker logged onto RAES for that class, regardless of his participation percentage, is entitled to be assigned at least one spoke on every revolution of the RAES Wheel. For example, if a spoke equals one contract then there will be 100 spokes that will be assigned to market-makers on every revolution of the RAES Wheel. If a spoke is defined as five contracts then there will be 500 RAES contracts assigned to the participating market-makers before the RAES Wheel completes one revolution. Generally, the RAES Wheel will consist of the number of spokes replicating the cumulative percentage of all market-makers logged onto the system who have a participation percentage plus one spoke for each market-maker that does not have a specific participation percentage.

A wedge is the maximum number of spokes that a market-maker may be consecutively assigned at any one time of the RAES Wheel. Because the size of the wedge may be smaller than the number of contracts to which a particular market-maker is entitled during one revolution of the RAES Wheel, that market-maker will receive more than one turn during one revolution of the RAES Wheel. The wedge size will be variable, at the discretion of the appropriate Floor Procedure Committee and may be different for different classes or the same for all classes.

The appropriate Floor Procedure Committee will notify the membership of each class of options that it subject to the ''100 Spoke RAES Wheel''.

(d) No change.

* * * * *

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. CBOE has prepared summaries, set forth in Section 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

The purpose of the proposed rule change is to grant the appropriate FPC authority to institute a new procedure for assigning orders on RAES to individual market makers. This new procedure is referred to as the ''100 Spoke RAES Wheel.''

a. *Background.* CBOE FPCs currently have two options by which to allocate RAES orders: The ''entire-order'' procedure and Variable RAES. Under the entire order procedure, RAES orders are assigned to market makers participating on RAES one order at a time to the market maker next in line on the ''RAES Wheel.'' When a particular market maker reaches his turn on the RAES Wheel, the market maker is assigned one entire order whether the order is for one contract or for the maximum number of contracts eligible for entry into RAES for that particular class of options. By contrast, under Variable RAES, for each class of options in which a market maker participates in RAES, that market maker is required to designate the maximum number of contracts that he is willing to buy or sell each time it is his turn on the RAES Wheel.[4] Additionally, the appropriate FPC may establish a minimum number of contracts which a market maker must be willing to accept. CBOE represents that its FPCs now employ Variable RAES for equity options and both narrow-based and broad-based index options.[5] The current proposal provides the appropriate FPC with a third choice for apportioning RAES trades among participating market makers.

b. *The '''100 Spoke RAES Wheel''.* Under the ''100 Spoke RAES Wheel,'' RAES orders would be assigned to logged-in market makers according to the percentage of their in-person agency contracts traded in that class (excluding RAES contracts traded) compared to all of the market maker in-person agency contracts traded (excluding RAES contracts) during the review period. Agency contracts are defined as contracts that are represented by an agent and do not include contracts traded between market makers in person in the trading crowd. CBOE represents that in-person agency contracts include trading by a market maker against an order represented by a broker in the trading crowd, or against a booked order, but do not include contracts traded on RAES.[6]

On each revolution of the RAES Wheel, subject to the exceptions described below, each participating market maker (who is logged onto RAES at the time) will be assigned enough agency contracts to replicate the percentage of contracts on RAES that he traded in-person in that class during the review period. The appropriate FPC will determine the review period but in no event will it be entitled to set the review period for a period greater than two weeks. A participation percentage will be calculated for each market maker for each class that the market maker trades. The percentage distribution determined during a review period will be effective for the succeeding review period. Thus, any new market maker entrant in the trading crowd will earn his percentage entitlement for RAES trades after spending no more than two weeks in the crowd.[7] During the initial review period, a new market maker will receive a one-spoke entitlement. All designees of the same Designated Primary Market Maker (''DPM'') unit will have their percentage aggregated into a single percentage for the DPM unit. Because of this methodology, the DPM unit can still receive its entitled percentage even if any particular designee is not logged onto RAES at the time.

Once a percentage has been determined for a particular market maker, to understand how the RAES orders will actually be allocated to market makers to meet those percentages, one must understand the

[4] *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (approving implementation of Variable RAES).

[5] Telephone conversation between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (February 3, 2000).

[6] *Id.*

[7] *See* Amendment No. 1, Letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulatory, SEC, dated January 19, 2000.

concepts of ''spokes'' and ''wedges.'' The RAES Wheel may be envisioned as having a number of ''spokes,'' each generally representing 1% of the total participation of all market makers in the class. That is, a market maker generally will be assigned one spoke for each 1% of his market maker participation during the review period. If all market makers who are active during the review period are logged on to RAES and no other makers are logged on, the RAES Wheel will consist of 100 spokes, representing 100% of all market maker activity during the review period. Normally, one spoke on the Wheel will be equivalent to one contract, except that the appropriate FPC may establish a larger spoke size. For example, setting the spoke size to five contracts would redefine the RAES Wheel for a particular option class as a Wheel of 500 contracts. Changing the spoke size (and thus, the Wheel size) does not change the participating percentages of the individual market makers.

For example, if there are twelve market makers in a crowd, consisting of ten veteran market makers each of whom accounted for 10% of total market trading (exclusive of RAES trades) during the review period, and two new market makers, and if nine of the veteran market makers and both of the new market makers are logged on to RAES, the RAES Wheel will consist of 92 spokes (10 spokes for each of the nine veteran market makers, and one spoke for each of the two new market makers),[8] accounting for 92 contracts in a complete revolution of the Wheel. In this case, each of the veteran market makers will participate in ten out of every 92 contracts traded on RAES, and the two new market makers will each receive one out of every 92 contracts.

A wedge is the maximum number of spokes that may be assigned to a market maker in any one ''hit'' during a rotation of the RAES Wheel. The concept of the wedge is to break up the distribution of contracts into smaller groupings in order to reduce the exposure of any one market maker to market risk. If the size of the wedge is smaller than the number of spokes to which a particular market maker may be entitled based on his participation percentage, that market maker will be assigned more than once during one revolution of the RAES Wheel. For example, in the case where one spoke is equal to one contract and the market maker's participation percentage is 15% (so he is entitled to 15 contracts on one RAES Wheel revolution, *i.e.,* 15% of 100) and the wedge size is 10, that market maker first will be assigned 10 contracts on the RAES Wheel and then 5 contracts at a different place on the RAES Wheel during that same revolution. Thus, in one complete revolution of the RAES Wheel, he will be assigned two times for at total of 15 contracts (assuming one contract per spoke), consisting of one 10-contract assignment and one 5-contract assignment. The wedge size will be variable at the discretion of the appropriate FPC and may be established at different levels for different classes, or at the same level for all classes.

Trade Example. To better understand how RAES contracts would be assigned under the ''100 Spoke RAES Wheel,'' the Exchange provides the following example. Assume ten market makers (''MM'') are logged into option class ABC with the following participation percentages: MM1=14%; MM2-1%; MM3=8%; MM4=24%; MM5=8%; MM6=5%; MM7=3%; MM8=2%; MM9=12%; MM10=23%.

Now assume the maximum number of contracts that any market maker may receive during one turn on the Wheel, *i.e.,* wedge size, is ten contracts. Assuming the Wheel starts with MM1 and spoke size is equal to 1 contract, the distribution of RAES contracts during one revolution of the RAES Wheel for class ABC will look as follows:

1. MM1 assigned 10 contacts
2. MM2 assigned 1 contact
3. MM3 assigned 8 contact
4. MM4 assigned 10 contacts
5. MM5 assigned 8 contracts
6. MM6 assigned 5 contracts
7. MM7 assigned 3 contracts
8. MM8 assigned 2 contracts
9. MM9 assigned 10 contracts
10. MM10 assigned 10 contracts
11. MM1 assigned 4 contracts
12. MM4 assigned 10 contracts
13. MM9 assigned 2 contracts
14. MM10 assigned 10 contracts
15. MM4 assigned 4 contracts
16. MM10 assigned 3 contracts

As can be seen, market makers 1 and 9 receive two turns on the Wheel during one revolution because their entitlement was higher than the wedge size. Market makers 4 and 10 receive three turns on the Wheel during one revolution.

The following example demonstrates how the orders of a particular size will be distributed under the scenario described above,

Order 1=20 contracts: Contra distribution is MM1=10 contracts; MM2=1; MM3=8; MM4=1
Order 2=4 contracts: Contra distribution is MM4=4 contracts
Order 3=20 contracts: Contra distribution is MM4=5 contracts; MM5=8; MM6=5; MM7=2
Order 4=20 contracts: Contra distribution is MM7=1 contract; MM8=2; MM9=10; MM10=7
Order 5=20 contracts: Contra distribution is MM10=3 contracts; MM1=4; MM4=10; MM9=2; MM10=1

d. *Benefit of the Proposed Distribution Via the 100 Spoke RAES Wheel.* CBOE believes that, in those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades will be essentially identical to the distribution of in-person agency market maker trades on non-RAES trades in that class. CBOE further believes that the implementation of the 100 Spoke RAES Wheel will reward those market makers who are most active in providing the services that a market maker is expected to perform, *i.e.,* providing liquidity to agency business in the assigned option class.

2. Statutory Basis

CBOE believes that the proposed rule change will enhance the ability of the Exchange to provide instantaneous, automatic execution of public customers' orders at the best available prices, which furthers the objectives of Section 6(b)(5)[9] of the Exchange Act 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

[8] The one-spoke allocation for each of the two new market makers will apply only during their initial review period. After that initial review period, each of the two new market makers will be entitled to the number of spokes they have earned during the applicable review period.

[9] 15 U.S.C. 78f(b)(5).

organization consents, the Commission will:

A. By order approve the 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 at 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–99–40 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–3370 Filed 2–11–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42400; File No. SR–NASD–99–23]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets That Occur Prior to the Opening of the Market

February 7, 2000.

I. Introduction

On May 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend NASD Rule 4613(e), ''Locked and Crossed Markets,'' to alter the rights and obligations of market participants in connection with locked and crossed markets[3] that occur prior to the opening of the market. On May 14, 1999, Nasdaq filed Amendment No. 1 to the proposal.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on June 10, 1999.[5] The Commission received four comment letters on the proposal.[6] Nasdaq responded to the commenters in a letter dated December 23, 1999.[7] This order approves the proposal, as amended.

II. Description of the Proposal

Currently, NASD Rule 4613(e) requires a market participant[8] that enters a quotation at or after 9:25:00 a.m.[9] that would lock or cross the market at the opening to act to avoid locking or crossing the market at the opening, but in no case later than 30 seconds after the opening (*i.e.,* 9:30:30). The market participant could, for example, send a SelectNet order to take out the quotation(s) that the market participant is crossing or locking. Nasdaq states that although current NASD Rule 4613(e) has alleviated some instances of locked or crossed markets at the opening, locked and crossed markets continue to occur at the opening because a market participant whose quotation is locked or crossed may not respond immediately to the SelectNet message of a market participant seeking to resolve the locked or crossed market. To address ongoing concerns with locked and crossed markets, Nasdaq proposes to amend NASD Rule 4613(e).

The proposed rule change will alter the rights and obligations of market participants with regard to pre-opening locked and crossed markets. As described below, a market participant's rights and obligations will vary depending on whether the locked or crossed market occurs prior to or after 9:20 a.m.

Locks or Crosses Occurring At or After 9:20 a.m. and Before 9:30 a.m. Under the proposal, a market participant that enters a quotation that locks or crosses the market between 9:20 a.m. and 9:29:59 a.m. must send to each market participant that he locks or crosses a SelectNet message at the quoted price(s) of the receiving market participant (''Trade-or-Move Message'') in an aggregate amount of at least 5,000 shares. The initiating or ''active'' locker must send the Trade-or-Move Messages to all parties to the lock or cross prior to or immediately after entering the locking or crossing quotation(s), and must place a modifier on each message indicating that the message is a Trade-or-Move Message.[10] Within 30 second of receiving a Trade-or-Move Message, the recipient must either: (1) Trade in full with the incoming Trade-or-Move Message; (2) decline to trade with the incoming Trade-or-Move Message and move its quotation to a price level that unlocks or uncrosses the market; or (3)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[4] *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated May 14, 1999. Amendment No. 1 revised the proposal to require a market maker that sends a Trade-or-Move Message (as defined below) to place a modifier on the message indicating the message is a Trade-or-Move Message.

[5] *See* Securities Exchange Act Release No. 41473 (June 2, 1999), 64 FR 31335.

[6] *See* letter from Arthur J. Kearney, Chairman, and Leopold Korins, President and Chief Executive Officer, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated May 28, 1999 (''STA Letter''); letter from Gerald D. Putnam, Chief Executive Officer, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated June 30, 1999 (''Archipelago Letter''); letter from Kevin M. Foley, Bloomberg L.P., to Jonathan G. Katz, Secretary, SEC, dated July 12, 1999 (''Bloomberg Letter''); and letter from Cameron Smith, General Counsel, Island ECN, to Jonathan Katz, Secretary, SEC, dated July 12, 1999 (''Island Letter'').

[7] *See* letter from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated December 23, 1999 (''December 23 Letter''). In the December 23 Letter, Nasdaq clarified that the proposal will apply to electronic communications networks (''ECNs''). In addition, Nasdaq provided an additional explanation of the rationale for the proposal and stated that the proposal would not require ECNs to assume proprietary positions.

[8] NASD Rule 4613(e) discusses the obligations of ''market makers'' with regard to locked and crossed markets. For purposes of NASD Rule 4613(e), the term ''''market maker'' includes: (1) Any NASD member that enters into an ECN, as that term is defined in Exchange Act Rule 11AC1–1(a)(8), a priced order that is displayed in Nasdaq; and (2) any NASD member that operates the ECN when the priced order being displayed has been entered by a person or entity that is not an NASD member. *See* NASD Rule 4613(e)(3).

[9] All references are to Eastern Time.

[10] *See* Amendment No. 1, *supra* note 4. The Trade-or-Move modifier will allow a market participant to distinguish a Trade-or-Move Message (to which a receiving market maker is obligated to respond) from other pre-opening messages it may receive.