

individuals are eligible for the member Death Benefit: (i) Any individual who is an active member at the time of his or her death; and (ii) any individual who (a) was an active member within ninety days prior to the date of his or her death, and (b) was an active member during at least 274 out of the 365 days preceding the date of his or her termination from active member status.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and in particular, with Section 6(b)(5) of the Act,⁵ in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change seeks to revise the Exchange's membership application posting process in a manner that will reduce inefficiency in the conduct of business on the Exchange and inconvenience to membership applicants while preserving the ability of members to submit information concerning the qualifications and fitness for membership of membership applicants. The proposed rule change will also clarify certain provisions of the Exchange's membership rules making it easier for members to understand those rules.

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

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

The Exchange has neither solicited nor received written comments on 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 Exchange 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, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statement 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-00-60 and should be submitted by February 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43829; File No. SR-CBOE-00-10]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1, to Permit the Chairman of the Appropriate Floor Procedure Committee to Decrease the Size of Orders Eligible for Entry Into the Retail Automatic Execution System During Unusual Market Conditions

January 10, 2001.

I. Introduction

On March 28, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities

and Exchange Commission ("Commission") 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 that would grant the Chairman of an appropriate Floor Procedure Committee ("FPC"), or his designee, the authority to decrease the size of orders eligible for entry into the Exchange's Retail Automatic Execution System ("RAES") during unusual market conditions. On January 3, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.³

The proposed rule change was published for comment in the **Federal Register** on June 8, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

Currently, the appropriate FPC of the CBOE has the authority to determine the size of orders eligible for entry into RAES up to a maximum of seventy-five contracts.⁵ In this proposal, the Exchange is seeking to amend Interpretation .05 to Rule 6.8, *RAES Operations*, to allow the Chairman of the appropriate FPC, or the Chairman's designee,⁶ to exercise the authority of the FPC to decrease the size of orders eligible for entry into RAES for option classes during unusual market conditions.⁷

In its filing, the Exchange represented that it is sometimes necessary to temporarily reduce the eligible order size levels for RAES in situations where unusual market conditions exist. However, under the current Exchange rules, a decision to decrease the eligible

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Angelo Evangelou, Counsel, CBOE, to Jennifer Colihan, Attorney, Division of Market Regulation ("Division"), Commission, dated January 2, 2001. ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the Chairman may designate his authority solely to: (1) another member of the FPC, or (2) or (2) two CBOE floor officials.

⁴ See Securities Exchange Act Release No. 42862 (May 30, 2000), 65 FR 36481.

⁵ See Exchange Rules 6.8(a)(i) and 6.8(e). The Commission recently approved a proposed rule change by the Exchange to increase the maximum size of RAES-eligible orders to seventy-five contracts. See Securities Exchange Act Release No. 43517 (November 3, 2000), 65 FR 69082 (November 15, 2000).

⁶ See Amendment No. 1, *supra* note 3.

⁷ The Exchange has represented that the minimum level to which the Chairman, or his designee, may decrease the size of orders eligible for entry into RAES pursuant to the proposed rule is ten contracts. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Jennifer Colihan, Attorney, Division, Commission, on September 8, 2000.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

order size must be made by the appropriate FPC. The Exchange represented that it is not practicable to provide notice to all the members of the appropriate FPC and convene a meeting during the day to make the decision to decrease eligible order size in the event of an unusual market situation.

Consequently, the Exchange seeks to delegate the authority provided in CBOE Rule 6.8(a)(i) to the Chairman of the appropriate FPC, or to the Chairman's designee, to decrease the eligible order size for RAES in unusual market conditions,⁸ provided that the Chairman or his designee believes that the action is warranted and provided that the decision is made for no more than one trading day (as is currently the case for the Chairman increasing the order size eligibility for RAES).⁹ To the extent that the conditions continue to exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to decrease the RAES eligible order size for that subsequent day. Further, any decisions made by the Chairman or his designee to decrease the RAES eligible order size for a particular option class for consecutive days will be reviewed by the FPC at its next regularly scheduled meeting. After reviewing these decisions, the FPC can provide guidance to the Chairman or his designee about the use of this authority if the FPC considers it appropriate.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act¹⁰ and the rules and regulations thereunder.¹¹ Section 6(b)(5) of the

⁸ According to the Exchange, unusual market conditions may include drastic movement in the security underlying an option, or news pending about the issuer of the underlying security. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Jennifer Colihan, Attorney, Division, Commission, on September 8, 2000.

⁹ Under CBOE Rule 6.8, Interpretation .05, the Chairman of the appropriate FPC currently is authorized to increase the order size eligibility for RAES if he believes that the action is in the interest of alleviating a potential backlog of unexecuted orders in situations where a particular class of option is experiencing a large influx of orders, and provided the decision is made for no more than one trading day. That rule, however, does not permit the Chairman to decrease the order size eligibility maximum.

¹⁰ 15 U.S.C. 78f(b).

¹¹ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3(f) of the Act. 15 U.S.C. 78c(f).

Act¹² states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that granting the Chairman of the appropriate FPC, or the Chairman's designee, the discretion to exercise the authority of the Committee to decrease the size of orders for entry into RAES is consistent with these statutory provisions.¹³

The Commission further believes that the requirement that the FPC review any decision made by the Chairman or his designee to decrease the size of orders eligible for entry into RAES for consecutive days will help ensure that the Chairman, or his designee, only uses the discretion in limited circumstances that require that such action be taken to ensure the market's integrity and adequate function. Finally, the Commission notes that because this proposed rule involves changing the parameters of the eligible RAES order size, any action taken pursuant to the proposed rule must be documented in accordance with CBOE Rule 6.8, Interpretation .08.¹⁴

IV. Amendment No. 1

In Amendment No. 1, the Exchange clarified that the Chairman may designate his authority to decrease the size of orders for entry into RAES during unusual market conditions only to: (1) Another member of the FPC, or (2) two CBOE floor officials.¹⁵ The Commission believes that this limitation

¹² 15 U.S.C. 78f(b)(5).

¹³ The Commission notes that approval of this rule change is not dispositive of whether all aspects of the revised Interpretation comply with the terms and conditions of section IV.h.(i)(bb) of the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Finding and Imposing Remedial Sanctions (the "Order"). The parties to the Order, including the Exchange, are required to "specify the circumstances, if any, under which automated execution systems can be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules and require the documentation of the reasons for each decision to disengage an automated execution system or operate it in any manner other than the normal manner." The Order further provides that parties to the Order must submit to the Commission staff draft proposed rule changes that comply with the requirements set forth above no later than six months from the date of the Order. See Securities Exchange Act Release No. 43268 (September 11, 2000).

¹⁴ The Commission notes that Interpretation .08 to CBOE rule 6.8 requires the CBOE to document instances in which the Chairman or his designee decrease RAES order size eligibility levels pursuant to this proposal. See Securities Exchange Act Release No. 43196 (August 22, 2000), 65 FR 52800 (August 30, 2000) (noticing immediate effectiveness of SR-CBOE-00-38, which implemented Interpretation .08).

¹⁵ See Amendment No. 1, *supra* note 3.

will help to ensure that only those persons with sufficient knowledge and judgment will be vested with the authority to make decisions that will affect the manner in which RAES is operated, and consequently the manner in which customer orders are executed. The Commission believes that it would be inappropriate for the Chairman of an FPC to delegate his authority to make decisions regarding how RAES is operated to an unlimited number of persons, with varying degrees of knowledge and aptitude for making such decisions.

The Commission, therefore, finds that Amendment No. 1 is consistent with section 6(b)(5) of the Act,¹⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in relating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission also finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The Commission notes that Amendment No. 1 merely clarifies precisely who is eligible to be the "Chairman's designee" for purposes of the proposed interpretation. Accordingly, the Commission believes that there is good cause, consistent with section 6(b)(5) and 19(b) of the Act¹⁷ to approve Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 at the Commission's Public Reference Room. Copies of such filing will also be

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(5) and 78s(b).

available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-00-10 and should be submitted by February 8, 2001.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-CBOE-00-10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-1485 Filed 1-17-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 43824; File No. SR-EMCC-00-05]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Approving a Proposed Rule Change Relating to Increasing the Minimum Clearing Fund Requirement for All EMCC Members to \$3,000,000 and Establishing Two Tiers of Inter-Dealer Broker Membership Standards

January 9, 2001.

On July 14, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 16, 2000, and November 1, 2000, amended a proposed rule change (File No. SR-EMCC-00-05) 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 December 1, 2000.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The purpose of the rule change is to (i) increase the minimum clearing fund

requirement for all EMCC members to \$3,000,000 from the current required minimum of \$1,000,000 and (ii) provide two tiers of IDB membership standards.³

With respect to the increased minimum clearing fund requirement, EMCC's risk advisory subgroup reviewed EMCC's two years of operations, including trade files and daily margin calculations. The subcommittee concluded that, generally, members' calculated clearing fund requirements did not go below \$3,000,000. Moreover, raising the minimum requirement from \$1,000,000 to \$3,000,000 is consistent with the clearing fund requirements imposed on IDBs by other clearing corporations,⁴ and it addresses the fact that IDB members have a potential clearing fund loss liability that could well exceed the current \$1,000,000 clearing fund minimum. Accordingly, EMCC has determined that it would be more appropriate to have a greater amount of IDB funds on hand to cover the potential exposure than to have to request such a deposit if needed due to a loss. Therefore, EMCC has determined that it is appropriate to increase all members', including IDBs', minimum clearing fund requirement to \$3,000,000.

The rule change also separates IDBs into two membership categories based on excess net capital or excess financial resources. Those IDBs with excess net capital, or excess financial resources for a broker or dealer regulated by the Securities and Futures Authority Limited, of between \$10,000,000 and \$20,000,000 will be margined using an "event factor" of 1.5 instead of the factor of 1.25 currently used in EMCC's base margining formula. This factor is representative of the volatilities experienced during the last three emerging market events.⁵ Those IDBs with excess net capital or excess financial resources of more than \$20,000,000 will be margined under the current event factor of 1.25.

EMCC believes that the two-tier membership standard will permit it to better collateralize the risk posed by IDBs with lower levels of capital. EMCC recognizes that the clearing fund is a key mitigant to market risk in the event

of member insolvency and feels that margining those IDBs with less than \$20,000,000 excess regulatory capital at an event factor of 1.5 should mitigate the risk of their lower capital levels.

The effective date for these approved changes will be thirty days following the date the Commission approves the filing for current members and will be immediately for any applicant who becomes a member after the rule change is approved.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency for which it is responsible.⁶ The Commission believes that the approval of EMCC's rule change is consistent with this Section. The Commission believes it is prudent for EMCC to have a greater amount of IDB funds on hand to cover the potential exposure than to have to request such a deposit if needed and to increase all members', including IDBs', minimum clearing fund requirements to \$3,000,000. In addition, the Commission believes that the two-tier membership standard whereby EMCC will margin IDBs with less than \$20,000,000 excess regulatory capital at an event factor of 1.5 will permit EMCC to better collateralize the risk posed by IDBs with lower levels of capital.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-EMCC-00-05) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 43618 (November 27, 2000), 65 FR 75327.

³ EMCC's Rules define an IDB as "a broker-dealer that conducts securities trading which matches buyers and sellers who are banks or dealers, and who is designated as such by the Corporation."

⁴ See, e.g., Government Securities Clearing Corporation Rule 4, Section 2(c).

⁵ October, 1997 (Asia), August, 1998 (Russia), and January, 1999 (Brazilian).

⁶ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁷ 17 CFR 200.30-3(a)(12).