

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the production of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change; however, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time period. The Amex seeks to have the Commission waive the five-day notice. The Commission finds good cause to waive the five-day notice because the Exchange's staff discussed with Commission staff the possibility of permitting members to use personal cellular on a temporary basis prior to filing this proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Amex seeks to have the proposed rule change, as amended, become operative immediately. The Commission notes that the proposed rule change, as

amended, is a direct result of exigencies created by the September 11, 2001 attacks on the World Trade Center; as such, the Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of October 1, 2001.¹²

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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-2001-82 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44891; File No. SR-CBOE-2001-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Extension of the Rapid Opening System Pilot Program

October 1, 2001.

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 September 20, 2001, the Chicago Board Options Exchange, Incorporated ("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 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 Exchange proposes to extend for one year the pilot program established in Rule 6.2A, Rapid Opening System, which governs the operation of, and the eligibility to participate in, the Exchange's Rapid Opening System ("ROS pilot"). The text of the proposed rule change follows. Deleted text is bracketed. New text is italicized.

Rapid Opening System

Rule 6.2A

- (a)-(c) No change.
- (d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [September 30, 2001] *September 30, 2002* on a pilot basis.

Interpretations and Policies

- .01-.02 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to extend the ROS pilot program for one year or until such time as the Commission has approved ROS on a permanent basis, whichever occurs first.³ The ROS pilot is currently set to expire on September 30, 2001.⁴ ROS is a system developed by the Exchange to open an entire options class, all series, as a single event, based on a single underlying value. ROS provides the Exchange the ability to automate the opening of its various option classes, thereby avoiding the lengthier opening rotations that can occur under circumstances when there is a large influx of orders entered before or during the opening rotation.

The Exchange believes that ROS has operated successfully over the past two and one-half years and without any problems. On that basis, the Exchange believes that a one-year extension of the ROS pilot is warranted. The extension of the pilot period will allow the Exchange to continue to provide the substantial benefits of ROS while the Exchange prepares its proposal for permanent approval of ROS.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to promote just and equitable principles of trade 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 impose 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

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,⁷ and Rule 19b-4(f)(6)⁸ thereunder, because the proposal: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative prior to 30 days after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).⁹

As stated above, a proposed rule change filed under rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative no later than September 30, 2001. The immediate effectiveness of the proposed rule change will allow ROS pilot to continue in effect without interruption.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons.¹² First, the proposed

rule change merely extends the expiration date of the ROS pilot from September 30, 2001, to September 30, 2002. Second, an extension would allow the Exchange to continue to offer ROS without interruption, while the Exchange prepares its proposal seeking permanent approval of the ROS pilot. And lastly, the ROS pilot was the subject of prior notice and comment when it was first proposed.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change becomes operative immediately upon the date of filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

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 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 CBOE. All submissions should refer to File No. SR-CBOE-2001-52 and should be submitted by October 30, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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efficiency, competition, and capital information. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(13).

³ The Exchange is only requesting an extension of the ROS pilot in this filing. The Exchange is currently preparing a separate proposal for permanent approval of ROS.

⁴ The Commission initially approved the ROS pilot on February 9, 1999. See Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999). The Commission subsequently extended the ROS pilot. See Securities Exchange Act Release No. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000); and Securities Exchange Act Release No. 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on