

Members are members of one New DOEAs as well as three DOEAs that are not New DOEAs and the New DOEAs received an allocation of five members and two of the remaining DOEAs also received an allocation of five members with the fourth DOEAs receiving an allocation of six members, only two of the five Common Members allocated to the New DOEAs would be reallocated since such reallocation would result in an equal allocation of six each among the remaining DOEAs. For calendar year 2004, the Common Members reallocated from the New DOEAs to the remaining DOEAs as part of the allocation for calendar year 2003 shall be reallocated back to the New DOEAs to which such Common Member was originally allocated.

Exhibit A—Participant Rules Applicable To The Conduct Of Covered Securities:

RULES ENFORCED UNDER 17D-2 AGREEMENT

Opening of Accounts	
AMEX	Rules 411 and 921
CBOE	Rule 9.7
ISE	Rule 608
NASD	Rule 2860(b)(16); IM-2860-2
NYSE	Rules 721 and 405
PHLX	Rule 1024(b)
PCX	Rule 9.2(a) and Rule 9.18(b)
Supervision	
AMEX	Rules 411 and 922
CBOE	Rule 9.8
ISE	Rule 609
NASD	Rule 2860(b)(20)
NYSE	Rules 722, 342 and 343
PHLX	Rule 1025
PCX	Rule 9.2(b)
Suitability	
AMEX	Rule 923
CBOE	Rule 9.9
ISE	Rule 610
NASD	Rule 2860(b)(19)
NYSE	Rule 723
PHLX	Rule 1026
PCX	Rule 9.18(c)

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the amended plan. 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 amended plan that are filed with the Commission, and all written communications relating to the amended plan 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 each of the SRO participants. All submissions should refer to File No. S7-966 and should be submitted by November 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46598; File No. SR-CBOE-2002-56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Broker-Dealer Access on RAES

October 3, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 25, 2002, 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 the 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 CBOE is proposing to allow broker-dealer ("BD") orders in equity options to be eligible for routing through the Exchange's Retail Automatic Execution System ("RAES"). 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently allows BD orders in certain index option series to receive automatic execution through RAES, subject to the conditions contained in Interpretation and Policy .01 ("I&P .01") to CBOE Rule 6.8. CBOE hereby proposes to amend I&P .01 to allow BDs to submit orders through RAES in certain equity option classes and/or series.³ Under the proposal, the Exchange intends to vest the appropriate floor procedure committee ("FPC") with the authority to determine the classes and/or series in which BDs may submit orders through RAES.⁴ As such, the Equity Floor Procedure Committee ("EFPC") would have responsibility for determining the eligible equity option classes and/or series while the Index FPC ("IFPC") would have the authority for determining the eligible index option classes and/or series (with the exception of the S&P 500, which falls under the jurisdiction of the SPX FPC). In this regard, the Exchange notes that with respect to equity options, the EFPC could determine to make BD orders eligible for automatic execution in the 100 most active classes, or conversely, the EFPC may allow BD orders in all series in all equity option classes. Pronouncements regarding eligible classes and/or series will be made by Regulatory Circular. The Exchange does not propose any changes to the types of BD orders eligible for automatic execution.⁵

Currently, there are three primary limitations on BD access to RAES: (1) BD orders may not automatically

³ Correspondingly, BDs will be eligible to submit orders in certain index option classes and/or series. Currently, BDs may submit orders in certain index option series.

⁴ The current rule allows the Exchange to determine the products in which BD orders may be submitted to RAES.

⁵ Currently, the Exchange may allow all categories of BD orders to receive automatic execution or it may allow only those BD orders that are not for the accounts of market makers or specialists to qualify for automatic execution.

¹¹ 17 CFR 200.30-3(a)(34).

¹⁵ U.S.C. 78(b)(1).

²⁷ 17 CFR 240.19b-4.

execute against orders in the book;⁶ (2) the eligible size limit for BD orders may be established at a level lower than that for public customer orders;⁷ and (3) BD orders may not be eligible for automatic step-up.⁸ The Exchange proposes to retain these three limitations (with the modifications described in the accompanying footnotes.)

BD orders executed through RAES will continue to be subject to the requirements of CBOE Rule 6.8. In this regard the Exchange notes that BD orders and public customer orders will both be subject to CBOE Rule 6.8(e)(iii), which prohibits the entry of multiple orders in a put and/or call class within a 15-second period for an account or accounts of the same beneficial owner.⁹ Correspondingly, the Exchange proposes herein to amend CBOE Rule 6.8A (*Electronically Generated and Communicated Orders*) to clarify its applicability to BD orders executed through RAES. CBOE Rule 6.8A currently applies to all RAES-eligible orders, however, because it was adopted prior to the allowance of BD orders in RAES, it makes reference to the term "public customers." Now that BD orders are eligible for execution through RAES, the reference to public customers in CBOE Rule 6.8A is incorrect. This proposal therefore eliminates that reference. The Exchange notes that Phlx Rule 1080, Commentary .05(i) codifies this same principle (*i.e.*, BD orders are subject to the restriction against electronically generated orders).

Finally, the current rule was approved on a pilot basis until November 20, 2002.¹⁰ The Exchange proposes to eliminate the pilot status of the current rule and seek permanent approval of the new rule. The Exchange believes there are several reasons why permanent approval is justified. First, CBOE initially proposed the pilot program as a way to allow it to evaluate the effectiveness of the program after six months of operation. The pilot program was NOT proposed due to any SEC

concerns. Therefore, the Exchange believes that there are no attendant regulatory concerns that would require continued operation under pilot status. Second, the pilot program has worked well and has attracted order flow to the Exchange without causing any operational problems or difficulties. Expanding the rule to apply to equities similarly will not cause any operational problems and will enhance the Exchange's competitive position. Third, the PCX rule was approved on a permanent basis,¹¹ accordingly, there is precedent for permanent approval. In this respect, the Exchange notes that all floor-based exchanges have (or are in the process of adopting) approved rules that grant BD access to automatic execution systems. Finally, the pilot expires in November and it is likely that SEC approval of this filing will not occur until late September or early October. By that time, the Exchange would have to submit an additional rule filing to seek permanent approval anyways. In short, this filing raises no new or unique issues of substance and, therefore, the Exchange believes it is practical to request permanent approval in this proposal instead of having to submit an additional filing a few weeks later.

2. Statutory Basis

The Exchange believes that this proposal will enhance the ability of BD orders to receive automatic executions in equity options, which should provide greater certainty to BDs with respect to their routing decisions. The Exchange further believes that this proposal, by allowing BD orders to receive automatic executions, will also increase depth and liquidity in those affected classes. Accordingly, the Exchange believes the proposed rule change is consistent with 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 Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.¹⁴

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(i) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶ Consequently, because the foregoing rule change: (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 for thirty days from the date on which it was filed or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange seeks to have the proposed rule change become operative immediately so that it may compete with other options exchanges.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective as of the date of this order.¹⁸ The Commission

Chief Counsel, Division of Market Regulation, Commission, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated May 16, 2002.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ For purposes of only accelerating the operative date of this proposal, the Commission has

⁶ CBOE Rule 6.8.01(b). The Exchange proposes to keep this provision but renumber it as 6.8.01(b)(1).

⁷ This provision has been renumbered from 6.8.01(c)(1) to 6.8.01(b)(2).

⁸ This provision has been renumbered from 6.8.01(c)(2) to 6.8.01(b)(3). In addition, the Exchange amends this provision to clarify that BD orders that are ineligible for automatic execution by operation of this section shall be routed either to PAR or BART for manual handling.

⁹ See also Phlx Rule 1080, Commentary .05(iii), which contains the identical restriction and was approved by the SEC. Exchange Act Release No. 45484 (February 27, 2002), 67 FR 10465 (March 7, 2002).

¹⁰ See Securities Exchange Act Release No. 45967 (May 20, 2002), 67 FR 37888 (May 27, 2002) and 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002).

¹¹ See Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Commission staff has provided interpretative guidance to the Exchange regarding the application of Section 11(a) of the Act, 15 U.S.C. 78k(a), to the RAES system. See letter from Paula Jensen, Deputy

notes that the other options exchanges currently permit BD orders to access their automatic execution systems and the Commission believes that this proposed rule change could enhance competition for BD orders in the options markets.

At any time within 60 days of the filing of such 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 Exchange Act.

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-2002-56 and should be submitted by November 1, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46600; File No. SR-CBOE-2002-39]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Make Certain Changes Pertaining to the Enforcement of Trading Conduct and Decorum Policies

October 4, 2002.

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 15, 2002, 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 CBOE. On August 30, 2002, CBOE submitted Amendment No. 1 to the proposed rule change.³ On September 17, 2002, CBOE submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.20(c) (Admission to and Conduct on the Trading Floor—Fines Imposed by Floor Officials) to authorize two Floor Officials, in consultation with a designated senior executive officer of the Exchange, to summarily exclude a member or person associated with a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 received on August 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety. In Amendment No. 1, the Exchange clarified that not all Class A offenses qualified the offender for summary exclusion, explained why three types of offenses previously set forth as "Violations of Trading Conduct and Decorum Policies" had been omitted from the proposed list of such violations, clarified that the "rolling look back" period used to determine the appropriate fine for Firm Quote violations will be 24 months, and cross-referenced the appeal procedure for the imposition of fines for minor rule violations.

⁴ See letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation ("Division"), Commission, dated September 16, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange underlined the entire subsection of Exhibit B to Amendment No. 2 labeled "Class A Offenses" to reflect that it is new text, and added the offense "Trading in the Aisle" to the subsection of Exhibit B to Amendment No. 2 labeled "Class B Offenses."

member from the Exchange premises for not longer than the remainder of the trading day for any violation of the Exchange's trading conduct and decorum policies that is classified as a Class A offense, except for those Class A offenses specified by Exchange Regulatory Circulars as not qualifying the offender for summary exclusion. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) (Imposition of Fines for Minor Rules Violations—Violations of Trading Conduct and Decorum Policies) to reflect the incorporation into the fine policies of specified higher fine levels for "subsequent" offenses. Finally, the Exchange proposes to issue a new Regulatory Circular setting forth the fines that may be imposed under CBOE Rule 17.50 for violations of CBOE Rule 6.20. The proposed Regulatory Circular also sets forth those violations that may qualify the offender for summary expulsion. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

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CHAPTER VI—Doing Business on the Exchange Floor

Section B: Member Activities on the Floor

* * * * *

Admission to and Conduct on the Trading Floor; Member Education
RULE 6.20.

(a) No Change.

(b) No Change.

(c) Fines Imposed by Floor Officials.

The Exchange shall periodically issue fine schedules setting forth which violations of the Exchange's trading conduct and decorum policies are subject to fines pursuant to CBOE Rule 17.50 and the specific dollar amounts of such fines. Floor Officials may (i) fine members and persons employed by or associated with members pursuant to CBOE Rule 17.50 for trading conduct and decorum violations which are subject to fine under such fine schedule, (ii) direct members and persons employed by or associated with members to act or cease to act in a manner to ensure compliance with Exchange Rules and accepted and established standards of trading conduct and decorum and/or (iii) refer violations of the foregoing to the Business Conduct Committee for disciplinary action pursuant to Chapter XVII of the Rules. *In addition, two Floor Officials in consultation with a designated senior executive officer of the Exchange, may summarily exclude a member or person*