

Therefore, CBOE represents that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designed by the Exchange as constituting a stated policy with respect to the enforcement of an existing rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

(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

Because the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the enforcement of an existing CBOE rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for

inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-96-22 and should be submitted by April 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37049; File No. SR-CBOE-96-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Telephone Policy for the S&P 100 ("OEX") Options Post

March 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 12, 1996, 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 the self-regulatory organization. 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 amend its policy governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index ("OEX Options") are traded² by relaxing the restriction on the use of the telephones to receive orders and by relaxing the prohibition on the use of post telephones to receive incoming calls. In addition, the Exchange is amending Rule 6.70 to make clear that a Floor Broker may receive orders from non-member

registered broker-dealers without satisfying the additional requirements necessary to take orders from public customers.

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 self-regulatory organization 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 self-regulatory organization 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

The purpose of the proposed rule change is to amend the Exchange's regulatory circular governing the use of telephones at the OEX trading post in two respects. First, the Exchange is relaxing the prohibition against brokers taking orders over the post telephones. Floor brokers who meet the requirements to do a public customers business, including the requirement that they be registered Representatives associated with a member organization which is qualified to do a public customer business under Chapter IX of the Exchange's rules, and who are approved by the Exchange to receive such telephone orders, would be permitted to take the orders of public customers.³ Floor brokers who are not qualified to do a public customer business would still be permitted to take the orders of registered broker-dealers, after receiving Exchange approval to take such telephone orders.⁴ Only phone lines dedicated to a particular floor broker who has been approved for such use by the Exchange may be used to receive orders.

³ In addition to the SEC net capital, recordkeeping, and financial reporting requirements applicable to member organizations, a member or associated person transacting business with the public must satisfy other requirements including, receiving approval of the Membership Committee, participating in certain education programs, and passing a test concerning the handling of customer accounts.

⁴ Floor brokers who intend to receive orders only from other Exchange members or other registered broker-dealers for their own accounts need not qualify to do a public customer business under Chapter IX, but still have to apply for approval to take orders over a floor telephone.

² CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The Regulatory Circular setting forth the OEX telephone policy initially was filed by the Exchange as SR-CBOE-95-15 (noticed in Securities Exchange Act Release No. 35725 (May 17, 1995)) on May 12, 1995, under paragraph (e)(6) of Exchange Act Rule 19b-4 and accordingly became effective upon the date of filing and operative 30 days thereafter. The Exchange decided to re-file the policy for full Commission review in SR-CBOE-95-49. That second filing was approved by the Commission on December 1, 1995 (Securities Exchange Act Release No. 36546, 60 FR 63552 (December 11, 1995)).

In File No. SR-CBOE-95-49, the Exchange expressed its concern regarding the ability of floor brokers to receive orders over the telephones by stating that it was concerned about "how to provide customers with access to the trading floor on a fair and nondiscriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers, and how to surveil order-taking activity conducted over floor telephones." The Exchange does not believe that its proposal will have a significant effect on customers access, given that calls now come into member firm booths, some of which are located just outside of the OEX post. In fact, allowing calls to come directly to the post eliminates the existing disparity between those members whose booths are adjacent to the post and those whose booths are further away. The Exchange believes it will be a business decision of the individual floor brokers and their member firms whether to use telephones at the OEX post, and that will determine customer access. Moreover, under the current system, brokerage firms already decide which customers may call them at the booth telephones. Therefore, this policy change should not represent a material departure from the current state of customer access. The Exchange's Department of Compliance will maintain a list of floor brokers who are approved to receive orders over telephone lines at the post. The Exchange will rely on floor officials and other members in the OEX trading crowd to surveil activities of floor brokers to assure compliance with these requirements.

A second change to the current policy involves relaxing the prohibition against receiving incoming calls to accommodate the receipt of orders. In File No. SR-CBOE-95-49, the Exchange stated that it "intends to consider these issues in the near future, and depending on its conclusions, the Exchange may determine to revise or eliminate these conditions." In fact, over the ensuing months, the Exchange has held a number of meetings to reconsider these conditions on the OEX post telephone before it decided to amend the policy. Only those telephone lines at the OEX post that are dedicated to the exclusive use of a floor broker who is approved to receive orders will be enabled to receive incoming calls. Under the proposal, only floor brokers who have been approved to receive orders would be permitted to receive incoming calls. At this point, the Exchange, however, is reviewing this policy and expects to

decide soon whether or not market-makers at the OEX post also should be permitted to receive incoming calls.

Pursuant to these proposed changes to the CBOE's telephone policy, two of the seven conditions from the Exchange's existing regulatory circular will be amended to read as follows:

- The telephones may not be used to receive orders except for those telephones dedicated to a particular floor broker who has been approved for such use by the Exchange. Only persons qualified to receive public customer orders may take such orders over the telephones. Quotations that have been publicly disseminated pursuant to Rule 6.43 may be provided from any of the telephones.
- Incoming calls are only permitted at the OEX post on the telephone lines of floor brokers who have been approved to receive calls by the Exchange.

To accommodate the receipt of orders, Rule 6.70, Floor Broker Defined, is being amended to state that a floor broker may receive orders from registered broker-dealers without satisfying the additional requirements necessary to take orders from public customers. Currently, Rule 6.70 states that a floor broker may only receive orders either from: (1) members, or (2) public customers, if, in the case of public customer orders, that floor broker is either the nominee of, or has registered his individual membership for, a member organization approved to transact business with the public in accordance with Rule 9.1. Orders from non-member registered broker-dealers do not fit into either of the above categories; they are not considered public customer orders and are not, by definition, orders of members.

The CBOE also proposes to amend Rule 6.70 to state explicitly the CBOE Rule 9.3 requirements that a floor broker seeking to transact business with the public must complete successfully an examination demonstrating adequate knowledge of the securities business. Currently, a floor broker must complete successfully the Series 7 examination to transact business with the public.

The CBOE believes that the proposed rule change will enhance communications between the OEX post and the public and provide faster execution for orders. The Exchange believes, however, that its proposal does not raise any regulatory concerns beyond those already presented by the current system. For the foregoing reasons, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by providing better access to the OEX post.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments on the proposed rule change 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 organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. 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 Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principle office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CBOE-96-14 and should be submitted by April 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

⁵ 17 CFR 200.30-3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-37050; File No. SR-CBOE-96-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts

March 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 12, 1996, 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 the self-regulatory organization. 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 amend its Regulatory Circular governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange.² The amendment would permit floor brokers to receive orders from CBOE market makers over outside telephone lines at the equity trading posts.

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 self-regulatory organization 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 self-regulatory organization 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

The purpose of the proposed rule change is to amend the policy currently governing the use of telephones at equity option trading posts by permitting market makers to place orders with floor brokers over the outside telephone lines.³ Currently, the telephone policy for the equity posts, which has been instituted pursuant to Exchange Rule 6.23,⁴ prohibits orders of any type to be entered via outside telephone lines. The policy for use of the telephones at the equity posts will remain unchanged in every other respect.

The Exchange has determined to make this change in the equity post telephone policy so that market makers may transmit their orders more efficiently even when they need to be off the floor to attend to personal or Exchange business. This change will permit the market makers to provide capital more quickly at option posts in the wake of news or market events and to hedge their positions in response to market news even when they are off the floor of the Exchange temporarily. The change will be particularly useful to those members of the Exchange that are often requested to attend meetings on Exchange matters during the trading day.

The Exchange believes that Exchange rules will prevent this policy from being used by market makers to avoid standing in their respective crowds or to assume de facto an appointment in an option traded at another post. Under the proposed policy, orders placed over the outside telephone lines will be counted as off-floor orders for purposes of determining a market maker's compliance with the 80% requirement of Rule 8.7. Pursuant to Interpretation .03 of Rule 8.7, Obligations of Market-Makers, a market maker must execute in-person 80 percent of his total transactions to receive market maker treatment for off-floor orders. An order that receives market maker treatment is entitled to certain benefits, such as favorable margin treatment under Regulation T; this is a strong incentive for the market makers to satisfy the 80% requirement. In addition, consistent

with Rule 8.7(a), orders placed by a market maker over the outside telephone lines at the equity posts should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Also, Interpretation .03 of Rule 8.7 states that the off-floor orders for which a market maker receives market maker treatment shall be effected for the purpose of hedging, reducing risk of, rebalancing, or liquidating open positions of the market maker. Finally, Interpretation .03 to Rule 8.7 also generally requires a market maker to execute at least 25 percent of this total transactions in-person.

Upon the approval of this new policy as a rule of the Exchange, the Exchange will publish a Regulatory Circular, substantially in the form attached hereto.

As with the current policy governing the use of telephones at the equity trading posts, the Exchange intends to monitor compliance with these conditions by means by customary floor surveillance procedures, including reliance on surveillance by Floor Officials and Exchange employees. In addition, the Exchange will review on a weekly basis clearance data, as it does now, to assure that a market maker meets the 80% in-person requirement.

The Exchange believes that its proposal is consistent with and further the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets. In addition, the Exchange believes that this change in policy will enhance the Exchange's ability to provide capital where it is most needed on the Exchange floor and it will provide market makers with an efficient method to protect their portfolio even when they need to be off the floor.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments on the proposed rule change were neither solicited nor received.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The regulatory circular that governs the use of telephones at the equity trading posts was approved by the Commission on March 2, 1994. See SR-CBOE-93-24, Exchange Act Release 34-33701 (March 2, 1994), 59 FR 11336.

³ Currently, the Exchange permits market makers to place orders with floor brokers via intra-floor lines.

⁴ Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor.