

## 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 meeting during the week of September 1, 1997.

A closed meeting will be held on Thursday, September 4, 1997 at 10:00 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)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

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, September 4, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement 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: August 28, 1997.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38972; File No. SR-CBOE-97-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Duties of Market Makers

August 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 24, 1997 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC") or "Commission") the proposed rule change as described in Items I and II 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 add an interpretation to Rule 8.7 and to Rule 7.5 to clarify CBOE's policy regarding the enforcement of those rules concerning the obligations of Market-Makers.

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 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

###### 1. Purpose

The purpose of the proposed rule change is to clarify the Exchange's policy regarding the enforcement of

Rule 8.7 and Rule 7.5 concerning the obligations of Market-Makers. Rule 8.7(b) presently provides that, for each class of option contracts for which a Market-Maker holds an appointment under Rule 8.3, the Market-Maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. In short, Rule 8.7(b) sets forth a Market-Maker's obligation to make markets in a class of options in which he holds an appointment.

Rule 7.5 presently provides a mechanism by which Exchange Order Book Officials may "call upon" Market-Makers to make bids (offers) in a particular class of options that contribute to meeting the standards set forth in Rule 8.7. In particular, at the request of a floor broker or on the Order Book Official's own initiative in the interests of a fair, orderly and competitive market, an Order Book Official may call upon those Market-Makers who hold an appointment to the particular options class or who that day have effected a transaction for their accounts in that class of options. The Order Book Official is required to make a record of Market-Makers "who fail to respond" to this request.<sup>2</sup>

The Exchange has always interpreted Rule 8.7(b) as applying to Market-Makers who are present on the Exchange floor and as applying with

<sup>2</sup> In addition, the Commission notes that other CBOE rules exist to help ensure a sufficient number of Market-Makers will be available to make markets in a particular trading crowd. For example, Rule 8.3(a) permits the CBOE Market Performance Committee to make additional Market-Maker appointments whenever this committee deems such action to be in the interests of a fair and orderly market. Therefore, if there were an insufficient number of Market-Makers to respond to a call to a particular trading crowd, the Market Performance Committee could appoint additional Market-Makers to the classes traded at the affected trading crowd, which would make those additional Market-Makers subject to the call to that trading crowd under Rule 7.5. Should the Exchange be unable to require a sufficient number of Market-Makers to appear at an affected trading crowd, the CBOE Allocation Committee could move the location on the Exchange's trading floor where the affected option classes are traded to a trading crowd that has an adequate number of Market-Makers present or that has a Designated Primary Market-Maker ("DPM"). DPMs, in contrast to Market-Makers, are required to be present at their trading posts throughout every business day. See also Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 20, 1997 (discussing the aforementioned safeguards).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

respect to the trading crowd in which the Market-Maker is present at the time in question. Similarly, the Exchange has always interpreted Rule 7.5 as applying to Market-Makers who are present on the Exchange floor at the time of the Order Book Official call. The Exchange has not interpreted Rule 8.7 or Rule 7.5 as requiring Market-Makers to appear on the Exchange floor to make markets on any particular day or under any particular market conditions.<sup>3</sup> However, when a Market-Maker is on the trading floor and is present in a particular trading crowd, the Exchange does enforce the obligations set forth in Rule 8.7 with respect to the Market-Maker's activities in that trading crowd. Similarly, whenever a Market-Maker is on the trading floor, the Exchange enforces the obligations set forth in Rule 7.5 as to that Market-Maker.

The Exchange's present interpretation is consistent with Rule 8.7(b) paragraphs (i) through (iii), which make clear that, *at the station where a Market-Maker is present*, a Market-Maker is expected to perform certain activities in the course of maintaining a fair and orderly market. Similarly, the Exchange's present interpretation is consistent with the text of Rule 7.5 which, by authorizing Order Book Officials to "call upon" Market-Makers and by requiring a record of those who "fail to respond," implicitly recognizes that this procedure will apply to Market-Makers whose physical presence on the floor will enable them to hear and "respond" to such a "call." The proposed Interpretation .09 to Rule 8.7 and proposed Interpretation .04 to Rule 7.5 would clarify CBOE's existing interpretation and enforcement policy regarding Rule 8.7(b) and Rule 7.5.

The Exchange believes such clarification is necessary because it knows of at least one instance where Rule 8.7 obligations were misinterpreted. In a class action lawsuit filed against the Exchange, *Spicer et al.*

<sup>3</sup> Although Rule 8.7 and Rule 7.5 do not require Market-Makers to appear at the Exchange to perform their market-making duties, the Commission notes that other CBOE rules encourage Market-Makers to undertake their market-making functions. For example, Rule 8.60 provides that the CBOE Market Performance Committee may take remedial action against Market-Makers or trading crowds that fail to satisfy minimum market performance standards. Accordingly, the failure of a Market-Maker or trading crowd to appear at the Exchange and to make markets in a volatile market situation is a factor the CBOE Market Performance Committee could consider in evaluating the performance of a Market-Maker or trading crowd and in determining whether to take remedial action against a Market-Maker or trading crowd pursuant to Rule 8.60. Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 20, 1997.

*v. Chicago Board Options Exchange, Inc. et al.*,<sup>4</sup> counsel for the class took the position that Rule 8.7 imposed an obligation on all Market-Makers to appear on the Exchange's trading floor and to make markets under certain market conditions. The Exchange believes the proposed interpretation will help avoid such misinterpretation of either Rule 8.7(b) or Rule 7.5 in the future.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in that the Exchange's clarification of its interpretation and policy regarding Market-Maker obligations under Rule 8.7 and Rule 7.5 is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

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

The Exchange believes the proposed rule change does not 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 on the proposed rule change.

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

The foregoing rule change constitutes an interpretation with respect to the enforcement of an existing rule of the self-regulatory organization. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (e) of Rule 19b-4 thereunder.<sup>7</sup> At any time within sixty 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 Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>4</sup> *Spicer v. Chicago Board Options Exchange, Inc.*, No. 88C 2139, 1990 WL 172712 (N.D. Ill. Oct. 30, 1990) *aff'd*, 977 F.2d 255 (7th Cir. 1992).

<sup>5</sup> 15 U.S.C. § 78f(b)(5).

<sup>6</sup> 15 U.S.C. § 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

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 at the Commission's Public Reference Room, 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 File No. SR-CBOE-97-34 and should be submitted by September 24, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 97-23340 Filed 9-2-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38974; File No. SR-CBOE-97-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Operation and Enforcement of Rules Relating to the Transmission of Orders to Exchange Electronic Order Systems Including RAES

August 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 22, 1997, 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 self-regulatory organization. The Commission is publishing this notice to solicit

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).