

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.³ 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.*

³ 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.,⁴ 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 Act⁵ 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 Act⁶ and subparagraph (e) of Rule 19b-4 thereunder.⁷ 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

⁴ *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).

⁵ 15 U.S.C. § 78f(b)(5).

⁶ 15 U.S.C. § 78s(b)(3)(A).

⁷ 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:⁸

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"),¹ 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

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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 issue a regulatory circular pertaining to the administration and enforcement of Exchange rules regarding the routing of ineligible orders to Exchange electronic order handling systems including RAES and the electronic public customer order book.

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 consolidate and clarify in a single regulatory circular (referred to as "Regulatory Circular 97-aa") the Exchange's policies concerning the administration and enforcement of the rules governing the entry of orders to Exchange electronic order handling systems including the Exchange's Retail Automatic Execution System ("RAES")² and the electronic public customer order book.³ In addition, the rule filing sets forth steps that member firms may take to avoid liability for the actions of their correspondent firms in entering ineligible orders to RAES and the electronic book.

² RAES is the Exchange's automatic execution system for small public customer market or marketable limit orders.

³ The electronic public customer order book ("EBOOK") is an automated system whereby booked orders are automatically sorted and filed in price and time sequence. As orders are traded from EBOOK, Last Sale prices are automatically generated and overhead screens on the CBOE floor are simultaneously updated. Upon trade endorsement by Exchange book staff, execution reports are instantaneously generated.

Prohibition on RAES Unbundling

The first section of the circular merely restates and clarifies the terms of current CBOE rules and circulars concerning the order eligibility requirements that orders must meet in order to be executed on RAES. The Exchange believed it was important to combine these criteria into one circular to provide guidance to Exchange members regarding these matters.

First, the circular reiterates that to be eligible for RAES, orders must be market or marketable limit orders of public customers.⁴ In addition, RAES will accept market or marketable limit orders with certain contingencies, pursuant to the terms of a regulatory circular approved by the Commission.⁵ The circular also restates Exchange rules that specify that eligible public customer orders are orders for an account in which a member or a non-member broker-dealer does *not* have an interest.⁶

The circular continues by stating that generally the volume limitation for eligible RAES orders is ten contracts or fewer. The circular also states the volume parameters for a number of option classes where the eligible RAES order size is greater than ten contracts. The circular points out that a complete list of the applicable volume parameters is available from Exchange Support Systems.

Finally, the first section of the circular restates the Exchange's policy, which is also set forth in Exchange rules, that orders for more than the applicable contract limit are never eligible for execution on the RAES system and may not be split in an attempt to make the parts of the order eligible.⁷

Regulatory Requirements Governing the Entry of Orders Over Exchange Systems

The second section of the regulatory circular sets forth the Exchange's long-standing interpretations regarding the

⁴ See Rule 6.8(a)(1) and Rule 24.15(a)(1).

⁵ See Regulatory Circular RG97-67 (June 11, 1997) which permits market and marketable limit orders tagged with AON (All or None), IOC (Immediate or Cancel), FOK (Fill or Kill), or MIN (Minimum quantity) to be executed on RAES. For MIN orders, the total order quantity must be within the RAES volume. This circular was approved in Securities Exchange Act Release No. 38702 (May 30, 1997), 62 FR 31184 (June 6, 1997).

⁶ Rule 6.8(a)(i) specifies that RAES is for the purpose of routing "small public customer market or marketable limit orders." * * * as defined in Rule 7.4(a) regarding placing of orders on the public customer book." Rule 7.4(a) states that no order shall be placed on the public customer book in which a member, any non-member joint venture participant, or any non-member-broker/dealer has an interest.

⁷ See Exchange Rule 6.8(a) and Exchange Rule 24.15(a).

liability of member firms for the use of RAES and other Exchange electronic order-handling systems by those firms' correspondent firms.⁸ In addition, this section of the circular sets forth recommended steps that a member firm may take to avoid potential disciplinary action for conduct of its correspondent firms in the use of RAES and other Exchange electronic order-handling systems.

First, the second section of the circular states that members and member firms who accept, execute, clear, and/or transmit agency orders for correspondent firms or who provide facilities for correspondent firms to transmit orders for execution via the Exchange's systems, including the Exchange's RAES systems or the electronic public customer order book, should provide written notice to all correspondent firms that explains the proper use of those systems, including the eligibility of orders for entry and the prohibition of unbundling RAES orders.

The circular further states that when the member firms provide facilities for correspondent firms to transmit orders for execution via Exchange systems, including the Exchange's RAES system or the electronic public customer order book, the member firms should ensure that correspondents have adequate written procedures to monitor and supervise the entry of orders to minimize misuses of Exchange systems and the potential for errors. The circular states that member firms may accomplish this by (a) obtaining and maintaining as part of their books and records, a copy of their correspondents' written control procedures pertaining to electronic order entry or (b) establishing the procedures by which a correspondent must abide and having the correspondent sign an agreement stating that it will abide by such procedures.

The circular further states the Exchange's long-standing practice of seeking disciplinary action against member firms for the violative activity of the correspondent firms in connection with the improper use of RAES and the Exchange's electronic order-handling systems where the member firm has not taken reasonable steps to ensure compliance by the correspondent firm.

For purposes of the circular, a correspondent firm is any firm or customer that has been given access to the Exchange's systems by the member

⁸ For purposes of the circular, a correspondent firm is any firm or customer that has been given access to the Exchange's systems by the member firm or by another correspondent of the member firm.

firm or by another correspondent of the member firm. Member firms should instruct their correspondents not to give access to the Exchange's systems to other customers without the prior knowledge and consent of the member firm through whose facilities such access would be provided.

The Exchange has carried out an increasing number of investigations of violative activity involving correspondent use of the Exchange's electronic order-handling systems. In addition, the Exchange has issued disciplinary decisions against member firms due to correspondents' improper use of Exchange electronic order-handling systems. The Exchange believes that the record-keeping suggested by the proposed regulatory circular will serve as an educational tool to help eliminate violations of the rules governing the use of such systems.

2. Statutory Basis

The Exchange represents that proposed rule change is consistent with the objectives of Section 6(b)(5)⁹ in that it will serve to promote just and equitable principles of trade and protect investors and the public interest.

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

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 a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the Exchange's rules and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act¹⁰ and subparagraph (e) of Rule 19b-4 thereunder.¹¹

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Board Options Exchange. All submissions should refer to File No. SR-CBOE-97-32 and should be submitted by September 24, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-23341 Filed 9-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38971; File No. SR-DCC-97-04]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of a Proposed Rule Change Relating to the Combining of Options and Repo Procedures

August 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 17, 1997, Delta Clearing Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DCC-97-04) as described in Items I, II, and III below, which items have been prepared primarily by Delta. Delta amended the proposed rule change on May 7, 1997, and May 29, 1997. 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

Delta proposes to combine its procedures ("Options Procedures") for the clearance and settlement of options trades and its procedures ("Repo Procedures") for the clearance and settlement of repurchase and reverse ("repo") agreement transactions into one set of procedures ("Combined Procedures") to be known as the Procedures for the Clearing of Securities and Financial Instrument Transactions.

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

In its filing with the Commission, Delta 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. Delta has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statement.²

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

1. Combined Procedures

The proposed rule change will effect various modifications to Delta's procedures relating to the clearance and settlement of options and repos.

a. *Definitions:* In addition to the defined terms discussed elsewhere in this notice, the Combined Procedures will contain the following defined terms which apply to transactions in both options and repos: closing transaction, contract, delivering participant, holder, long position, opening transaction, positions, purchasing participant, receiving participant, selling participant, settlement date, short position, system, trade date, transactions, underlying collateral, unit of trading, and variable terms.

"Contract" will refer to both option contracts and repo contracts. "Options contracts" will be defined to include puts and calls issued by Delta to a purchasing participant and matching puts and calls purchased by Delta from a writing participant. "Repo contracts" will be defined to include repos and

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by Delta.