by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of a Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard its participants' voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in such Qualified Plans. For purposes of this condition, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund, or FMR be required to establish a new funding medium for any Variable Contract. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan mades such decision without a vote of its participants.

5. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be make known promptly and in writing to all Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of various contractowners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of such Fund will monitor events in order to identify the existence of any material conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, the Participants shall submit to each Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

10. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a portfolio (or class thereof) of such Fund unless such Qualified Plan executes a fund participation agreement with the relevant Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusion

For the reasons summarized above, Applicants asserts that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17386 Filed 6–29–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40111); File No. SR–CBOE–97–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Definition of Stop Orders

June 23, 1998.

I. Introduction

On August 25, 1997, the Chicago Board Options Exchange, Inc. (''CBOE or Exchange''), filed with the Securities and Exchange Commission (''SEC or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 6.53 (''Rule''), governing the definition of option stop orders, to clarify that option stop orders on the CBOE are triggered when the option contract reaches a specified price ''on the CBOE floor.'' The proposed rule change was published for comment in Securities Exchange Act Release No. 39100 (September 19, 1997), 62 FR 50644 (September 26, 1997). No comments were received on the proposal.

On May 26, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] This order approves the proposal and approves

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephanie C. Mullins, Attorney, CBOE, to Mike Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated May 26, 1998 (''Amendment No. 1''). In Amendment No. 1, the CBOE amends the filing by clarifying that: (1) an option stop order is triggered by a trade, as well as by a bid or offer; (2) while the options markets do have access to information from other exchanges, they do not have an electronic linkage that provides for the transmission of orders similar to the Intermakert Trading System; and (3) while the CBOE does not explicitly prohibit trade-throughs, Rule 6.73(a) requires a floor broker ''to use due diligence to execute the order at the best price or prices available to him in accordance with the rules.'' and in some circumstances, a floor broker may determine that he should try to execute his order on another market.

Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The CBOE proposes to amend its Rule 6.53 (''Rule'') governing the definition of stop orders to clarify that an option stop order on the CBOE is triggered when the option contract reaches a specified price ''on the CBOE floor.''

Currently, paragraph (c)(iii) of Exchange Rule 6.53 defines a stop order as a contingency order to buy or sell when the market for a particular option contract reaches a specified price. The Rule does not specify, but has always been interpreted by the CBOE to mean, that the contingency to buy or sell is satisfied when the option contract trades or is bid at or above the stop price (in the case of a buy order) or trades or is offered at or below the stop price (in the case of a sell order) ''on the floor of the CBOE.'' [4] The proposed amendment will make it clear, therefore, that a stop order is not activated when the bid or offer (as appropriate) reaches the stop limit on another options exchange or when an options transaction occurs at the stop limit on another options exchange. The CBOE believes that the proposed rule change will clarify the required treatment of option stop orders under the CBOE's rules.

III. Discussion

After careful review of the Exchange's proposal, and for the reasons discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[6]

The Commission believes that the proposal is reasonable in that it will not adversely affect the depth and liquidity necessary to maintain fair and orderly markets because the proposal represents a codification of the existing practice of the CBOE requiring that stop orders left with CBOE members must be effected and executed based on transactions or quotes that occur only on the floor of the CBOE.[7] It also serves to clarify the responsibility of CBOE members regarding the handling of stop orders by removing a potential ambiguity contained in the existing Rule.

The Commission notes that the CBOE has retracted a statement made in its original filing that claimed CBOE options traders have no way of knowing whether a contract has reached a specified ''stop'' in another options market place.[8] CBOE now states that it recognizes that options markets do have access to trade and quote information occurring on other options exchanges; however, CBOE maintains that the absence of an electronic linkage providing for the transmission of orders to other options exchanges in order to access current quotes makes it impracticable for CBOE members to rely on such data.

The Commission disagrees that the existence of an electronic order routing linkage between options markets should be a requirement to ''triggering'' option stop orders based on quotes or transactions occurring in another options market. In determining the proper triggering event(s) that apply to option stop orders, the most important factor to consider is whether the triggering quotes or trades are bona fide and available on a timely and reliable basis. However, it is not necessary to have an electronic order routing linkage, such as the Intermarket Trading System (''ITS''), to ensure that quotes and trades occurring on other options exchanges meet this test.

Notwithstanding its disagreement with CBOE over the relevance of the existence of an intermarket electronic order routing system to the present proposal, the Commission believes there are valid reasons for approving the CBOE's proposal at this time. The rule proposal codifies an interpretation of CBOE Rule 6.53 that has been observed by market participants for many years. Indeed, this interpretation is consistent with the practices of the Annex and PCX.[9] Ideally, the extension of national market system principles to the options exchanges would include the existence of electronic linkages ensuring the availability to all market participants of real-time quote and trade information and the ability of exchange markets to access each other's markets at the touch of a button. Another reason to approve the present filing is that while real-time quote and trade information originating from other options markets is currently available to all market participants, including CBOE floor members, this information is not always reliable. For instance, during the last several years, the dissemination of options trade information has been subject, during certain peak market volatility events, to ''queuing,'' whereby quote and trade data become bottlenecked and cannot be delivered on a real-time basis. Until options quote and trade information becomes more reliable, it is reasonable for the options exchanges to limit instances where members must automatically trigger and execute customer orders based on quote and trade information emanating from the other options exchanges.

Given that CBOE's policy regarding options stop orders ignores quotes and transactions occurring on other options markets, it is important to emphasizes that broker-dealers representing customer options orders, including CBOE floor brokers, must continue to fulfill their best execution obligations, this includes monitoring the prices available on all exchanges that trade the particular option and may require the broker-dealer to attempt execution on the exchange with the best available price. Moreover, the CBOE, along with the other exchanges, should continue to efforts to increase the reliability of the dissemination of timely quote and trade information. At some point in future, when such reliability increases, it may be appropriate to activate stop orders or other contingency orders based on bids, offers, or executions occurring on other options markets.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment clarifies the description of the proposed rule change and explains several statements in the filing. For these reasons, the Commission finds good cause for approving Amendment No. 1 on an accelerated basis.

[4] *See* Amendment No. 1, *supra* note 3.

[5] 15 U.S.C. 78f(b).

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] The Commission notes that the American Stock Exchange (''Amex'') and the Pacific Exchange, Inc. (''PCX''), interpret their rules to mean that a stop order left with a member will be executed based on transactions or quotes that occur only on the floor of their own exchange. Telephone conversation between Stuart Diamond, Director of Rulings, Amex, and Chester A. McPherson, Staff Attorney, Division, Commission, February 3, 1998; telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, and James T. McHale, Special Counsel, Division, Commission, on June 18, 1998.

[8] The Commission notes that various available proprietary systems provide quotes and transactions reports on a real time basis.

[9] *See supra* note 7.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submissions, 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 the 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, DC 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–97–41, and should be submitted by July 21, 1998.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–97–41) is approved.

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. 34–40121; File Nos. SR–DTC–98–12, SR–PTC–98–02]

Self-Regulatory Organizations; The Depository Trust Company; Participants Trust Company; Notice of a Proposed Rule Change Relating to a Proposed Merger Between The Depository Trust Company and Participants Trust Company

June 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 29, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 1998, Participants Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on June 2, 1998, Participants Trust Company (''PTC'') filed with the Commission proposed rule changes as described in Items I, II, and III below, which items have been prepared primarily by DTC and PTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes relate to the arrangements for a proposed merger between DTC and PTC.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and PTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and PTC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In March 1998, PTC announced that it had decided to seek an affiliation with DTC. The arrangements for the proposed merger provide the following. PTC will merge with and into DTC, and DTC will make certain payments to PTC's shareholders. For at least two years from the effective date of the merger, DTC will provide the services currently offered by PTC in a separate division of DTC (''Division''). The current rules and procedures of PTC with respect to depository services, the processing of transactions in PTC-eligible securities, and the PTC participants fund will be incorporated into the rules and procedures of DTC and will be applied to the business of the Division.[3] In addition, DTC will offer PTC participants that are not DTC participants an opportunity to become participants of the Division.

Under the proposed rule changes, PTC's users, most of which are also DTC participants, will continue to have access to the depository services offered by PTC. DTC and PTC believe that the proposed merger should assist in eliminating redundant facilities and thereby should reduce the costs of processing transactions in mortgage-backed securities that are currently PTC-eligible.

DTC and PTC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because the arrangements for the proposed merger should assure that continued availability to PTC users of efficient and cost-effective depository services and thereby should facilitate the prompt and accurate clearance and settlement of transactions in PTC-eligible securities. In addition, the proposed arrangements should provide PTC participants with access to DTC's facilities and should be implemented consistent with DTC's obligations to safeguard securities and funds in its custody and control or for which it is responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

DTC and PTC believe that the proposed arrangements will impose no burden on competition. Securities depositories registered under Section 17A of the Act[5] are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another. Operating a securities depository requires a substantial and continuing investment in infrastructure including securities vaults, telecommunications links with users, data centers, and disaster recovery facilities in order to meet the increasing needs of participants and to respond to regulatory requirements.

DTC and PTC believe that the current regulatory scheme and the particular structure and nature of the depository industry provide ample means to insure that the merger of PTC with and into DTC will achieve regulatory objectives. Sections 17A and 19 of the Act[6] and the rules thereunder provide the Commission appropriate and effective regulatory authority over DTC. DTC is

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[10] 15 U.S.C. 78s(b)(2).

[11] 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 DTC and PTC.

[3] DTC and PTC have informed the Commission that the changes to DTC's rules and procedures to provide for the Division and to accommodate the application of PTC's current rules and procedures to Division business will be the subject of a future rule filing with the Commission.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1 and 78s.