

materially affecting the value of any Fund asset or investment, the Manager may revise the valuation as it, in its sole discretion, deems appropriate. In addition, each Manager shall send a report to each person who was an investor in its Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the investor of his or its federal and state income tax returns and a report of the investment activities of the Fund during such year by such date as may be required to permit investors to comply with income tax filing requirements (including extensions).

6. Each Fund and its Manager will maintain and preserve, for the life of the Fund and at least two years thereafter, all accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Fund to be provided to the investors, and agree that all such records will be subject to examination by the Commission and its staff. All required records will be maintained in an easily accessible place for at least the first two years.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40240; File No. SR-Amex-98-16]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to the Announcement of Closing Rotations in Equity and Narrow-Based Index Options After 4:02 p.m.

July 21, 1998.

I. Introduction

On April 8, 1998, the American Stock Exchange, Inc. ("Amex" or "The Exchange"), filed with the Securities and Exchange Commission ("SEC" or "the Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4² thereunder to permit a closing rotation in equity options to be announced after 4:02 p.m. The proposed rule change was published for comment in the **Federal Register** on May 12, 1998.³ No comments were received.

On July 9, 1998, the Amex submitted Amendment No. 1 to the proposed rule change.⁴ This order approves the proposal and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

On May 14, 1997, the Exchange received approval to move the close of equity and narrow-based index options trading from 4:10 p.m. to 4:02 p.m.⁵ This change was prompted by improvements in dissemination of closing prices in the underlying securities, the limited ability of public customers to react as quickly as professional traders to news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and registered traders trying to make orderly options markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock. Following receipt of approval, Rule 1 was amended to reflect this change to 4:02 p.m. The Amex states that the provision that permits a closing rotation⁶ to be initiated due to unusual market conditions was severely limited inadvertently when the rule was changed to require that notice of the closing rotation had to be publicly disseminated before 4:02 p.m. As currently written, the rule gives Floor Officials only two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.

The Amex proposes to amend Exchange Rule 1 to permit a closing rotation in equity and narrow-based

index options to be announced after 4:02 p.m., provided such a rotation does not begin sooner than five minutes after it is announced.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to provide Floor Officials with more than two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.⁸ The Commission notes that the Chicago Board Options Exchange ("CBOE"), the Pacific Exchange ("PCX"), and the Philadelphia Stock Exchange ("PHLX") permit trading rotation notice to be given after the close of trading.⁹

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

IV. Solicitation of Comments

Interested persons 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, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39959 (May 5, 1998), 63 FR 26231.

⁴ See Letter from Scott Van Hatten, Legal Counsel, Amex, to Michael Walinskas, Deputy Associate Director, SEC, dated July 9, 1998 ("Amendment No. 1"). Amendment No. 1 clarified that the Exchange had received approval to move the close of narrow-based index options trading from 4:10 p.m. to 4:02 p.m., as set forth in Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997). Amendment No. 1 also amended the filing to permit the announcement of closing rotations in narrow-based index options, in addition to equity options, after 4:02 p.m.

⁵ Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997).

⁶ A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

⁷ 15 U.S.C. 78f(b)(5).

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See CBOE Rule 6.2, Interpretations and Policies .02; PCX Rule 6.64, Commentary .01; and PHLX Rule 1047, Commentary .03.

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, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the SR-Amex-98-16 and should be submitted by August 19, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Amex-98-16) 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. 34-40250; File No. SR-CBOE-98-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees

July 22, 1998.

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 June 24, 1998,³ 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval of the fees relating to non-members.

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

The CBOE is proposing to change the subscription fee structure for the Exchange Bulletin by adding a fee for a new alternative of receiving the Bulletin via e-mail.

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 CBOE 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 CBOE 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 the Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to change the subscription fee structure for members and non-members receiving the Exchange Bulletin, and provide for the option of obtaining the Bulletin via e-mail. The proposed change would be effective beginning July 1, 1998, for members. For non-members the fees would be effective upon the date the Commission approves that portion of the proposal. Currently, one hard copy of the Bulletin is provided free of charge to all effective members, and each additional copy is \$100.00. For non-members, the Bulletin subscription fee is \$100.00 for each hard copy. The Exchange proposes to give the option of subscribing to the Bulletin via e-mail over the Internet to both members and non-members. Under the proposed changes a member's first copy (whether hard copy or via e-mail) will be free of

charge, and each additional copy via e-mail delivery would be \$50.00. The fee to non-members for e-mail delivery will be \$50.00 for each copy.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and others using the Exchange's facilities.

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.

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 establishes or changes a due, fee, or other charge, for members,⁶ imposed by the Exchange, the change effecting members has become effective as of July 1, 1998, pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (e)(2) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the proposed rule change, affecting members, 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

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 17 CFR 240.19b-4.

³ The Exchange filed Amendment Nos. 1 and Amendment No. 2 to the proposed rule change on July 14, 1998, and July 15, 1998, respectively. See Letter from Stephanie C. Mullins, Attorney, CBOE, to Heather Seidel, Attorney, Division of Market Regulation ("Division"), Commission, dated July 13, 1998 ("Amendment No. 1"); and Letter from Stephanie C. Mullins, Attorney, CBOE to Kelly McCormick, Attorney, Division, Commission, dated July 14, 1998 ("Amendment No. 2"). Amendment No. 1 amends the part of the filing relating to fees charged to non-members to request the Commission's approval pursuant to Section 19(b)(2) under the Act, and to ask for accelerated approval for that portion of the filing. In Amendment No. 2,

the Exchange explained the procedure for informing its membership and the affected non-members of the proposed rule change.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ The proposed rule change also amends fees charged to non-members for delivery of the Exchange Bulletin. The portion of this proposed rule change that affects non-members has been filed pursuant to Section 19(b)(2) of the Act and the Commission is granting partial accelerated approval for that part of the filing.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(e)(2).