

and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. As part of the In Kind Transactions, the purchase and sale of the shares of SA Trust and VIT will be effected at the respective net asset value. The In Kind Transactions will not have a material financial impact on the Contract owners or Separate Account A. The Section 17(b) Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a-7. To the extent that the In Kind Transactions do not comply fully with the provisions of paragraphs (a) and (b) of Rule 17a-7, the Section 17(b) Applicants assert that the terms of the proposed In Kind Transactions provide the same degree of protection to the participating companies and their shareholders as if the In Kind Transactions satisfied all of the conditions enumerated in Rule 17a-7. The Section 17(b) Applicants can also assert that the proposed In Kind Transactions by WSLAC and WSLIC do not involve overreaching on the part of any person concerned. Furthermore, the Section 17(b) Applicants represent that the proposed substitutions will be consistent with the policies of: (a) VIT and the New Touchstone Portfolios; and (b) SA Trust and the SAT II Portfolios, as is, or will be, stated in the registration statement or reports filed under the 1940 Act by each.

9. The Section 17(b) Applicants assert that the In Kind Transactions are consistent with the general purposes of the 1940 Act and that the In Kind Transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

### Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and In Kind Transactions should be granted.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-32597 Filed 12-8-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40732; File No. SR-CBOE-98-09]

### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

December 1, 1998.

On March 4, 1998, the Chicago Board Options Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange. The Exchange submitted Amendment No. 1 to its proposal on April 20, 1998.<sup>3</sup> Notice of the proposed rule change, as amended, was published on April 30, 1998 in the **Federal Register**, to solicit comment from interested persons.<sup>4</sup> On May 26, 1998, the Exchange withdrew the proposed rule change.<sup>5</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-32601 Filed 12-8-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40729; File No. SR-CBOE-98-47]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Trade Match Delayed Submission Fees

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 23, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change.<sup>3</sup> CBOE submitted to the Commission Amendment No. 1 to its proposal on November 10, 1998.<sup>4</sup> The proposed rule change, as amended, is 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 approve the proposal on the accelerated basis.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE-98-09. The Exchange subsequently submitted Amendment No. 1 to CBOE-98-09 on April 20, 1998. The proposed rule change was noticed in the **Federal Register** on April 30, 1998. See Exchange Act Release No. 29910 (April 24, 1994), 63 FR 23817. The Commission received no comments on the proposed rule change. Subsequently, the Exchange withdrew its proposed rule change. See Letter from Stephanie C. Mullins, Attorney, CBOE, to Ken Rosen, Attorney, Division of Market Regulation ("Division") Commission, dated May 26, 1998 ("Withdrawal Letter"). The current proposed rule change differs slightly from the original proposed rule change. Generally, in this proposal the Exchange delayed the implementation date of the proposed rule change by six months, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2).

<sup>4</sup> In Amendment No. 1, the Exchange, generally, made technical changes to its proposed rule language, defined the terms nominee-employee and out-trades, and provided a more detailed explanation of how a financial loss may arise from late trade submissions and an explanation for deleting Rule 2.30(d)(2). See letter from Stephanie C. Mullins, Attorney, CBOE, to Richard C. Strasser, Assistant Director, Division, Commission, dated November 6, 1998 ("Amendment No. 1").

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division of Market Regulation ("Division"), Commission, dated April 13, 1998.

<sup>4</sup> Securities Exchange Act Release No. 39910 (April 24, 1994), 63 FR 23817.

<sup>5</sup> See Letter from Stephanie C. Mullins, Attorney, Exchange, to Ken Rosen, Attorney, Division, Commission, dated May 26, 1998.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

The CBOE proposes to amend Exchange Rule 2.30, Trade Match Delayed Submission Fee, to reduce the amount of time permitted for trade submission before the imposition of fees and to include under the rule, all types of trades executed on the Exchange.

## **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 Exchange 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 III 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 Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

The Purpose of the proposed rule change is to expand the scope of CBOE Rule 2.30 to include all types of executed trades and to reduce the amount of time under Rule 2.30 in which Exchange members and clearing firms are assessed fees for late trade submission. Currently, market-makers and clearing firms are assessed fees for delayed trade match submissions if eighty percent of market-maker in-person trades are not submitted in less than two hours. The Exchange proposes to amend this rule to include all types of trades not just market-maker in-person trades) and to require, starting on January 1, 1999, that the submission time for fee assessment be gradually reduced from two hours to one hour. The eighty percent formula will remain the same, as will the provisions for extenuating circumstances.<sup>5</sup>

Non-market-maker trades were not originally included under Rule 2.30 because virtually all non-market-maker activity at that time met the two hour time requirement. Within the revised time frames, ultimately one hour, the Exchange anticipates that a small but significant portion of non-market-maker trades will not be submitted on time.

For this reason, all executed trades will be included, so that all parties in the trading process will be held to the same standards.

Under the proposal, the submission time reduction from two hours to one hour will be done gradually over a period of months, so that members and clearing firms will grow accustomed to the tighter time requirement and will be encouraged towards immediate submission of trades. The first time reduction will go into effect on January 1, 1999, and will require timely trade submission to be within ninety minutes of execution. The next reduction would go into effect on April 1, 1999, and will require timely trade submission to be within seventy-five minutes of execution. Finally, from July 1, 1999, forward, the Exchange will require that timely trade submission be within one hour of execution.

Presently, the average submission time for all market-maker trades is thirty-one minutes after execution, and eighty percent of all market-maker trades are submitted within one hour of execution. For non-market-makers, the average submission time is twenty-two minutes, and eighty-seven percent of trades are submitted within one hour of execution. Thus, it should not be a hardship for all members and clearing firms to abide by the proposed rule.

The purpose of this amendment is to increase the speed at which trades are received and matched by the trade match system. With the advent of a more automated trading environment, the current two hour requirement is not stringent enough and may cause the CBOE to be slower than other exchanges in matching trades. More timely trade submission should lead to quicker awareness of out-trades,<sup>6</sup> and consequently could limit financial loss, thereby allowing the Exchange to better compete with the other options exchanges for customer orders.

By making the time requirements for trade submission more stringent, this proposed rule should help members detect out-trades sooner. Once the mistake is discovered, one or both of the parties to the transaction may have to get out of a position or take on a new position to rectify the mistake. The more time that elapses before detection of an out-trade, the more likely it is that the market has shifted away from the market that existed when the trade was executed and the more likely that taking

on a new position or getting out of an existing position will incur financial loss.<sup>7</sup> Thus, the potential benefits to members and clearing firms of comparing trades immediately after execution are significant.

Exchange Rule 2.30(c), which formerly was reserved, is proposed to address the situation where a nominee-employee<sup>8</sup> of a clearing member executes and submits trades for that clearing member. Under the proposed rule, if the nominee-employee is assessed a fee for late trade submissions, the clearing member will not be assessed a separate fee. The clearing member will, however, be responsible for the fee assessed against its employee.

Additionally, because of improvements to the Exchange's trade match system and the advances of clearing firms, several sections of Rule 2.30 have become obsolete and are proposed to be eliminated. The proposed rule change would delete Exchange Rule 2.30(d)(2). Since this Rule was last amended, computer processing time has decreased. Thus, the computer processing run performed at the end of the trading day ("First Pass")<sup>9</sup> may be finished prior to the new submission deadline, rendering the Rule obsolete. Second, trades that are transacted late in the trading day no longer will be late merely by being submitted after the First Pass. Under the original two hour submission requirement and the First Pass schedule, trades submitted after the First Pass would be deemed late because the First Pass always was completed more than two hours after the end of the trading day. Under the proposal, this situation will not always be the case.

Additionally, the proposed rule is a more objective criteria and will be unaffected by any future changes in the First Past schedule. Thus, the Exchange proposes to delete Rule 2.30(d)(2).<sup>10</sup>

In addition, when rule 2.30 was initially implemented, a deficient clearing firm exception was included, 2.30(f)(1). This exception waived fifty percent of a market-maker's delayed submission fee if the clearing firm through which the market-maker submitted trades was severely deficient in submitting all of its trades on a particular day. This exception initially was applied infrequently and in the last

<sup>7</sup> See Amendment No. 1, *supra* note 4.

<sup>8</sup> Under the Rule, a nominee-employee member is a member who is a clearing member employee. See Amendment No. 1, *supra* note 4.

<sup>9</sup> Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, dated November 10, 1998.

<sup>10</sup> See Amendment No. 1, *supra* note 4.

<sup>5</sup> Telephone conversation between Stephanie C. Mullins, Attorney, CBOE, and Terri L. Evans, Attorney, Division, Commission, on November 6, 1998. See also Amendment No. 1, *supra* note 4.

<sup>6</sup> An out-trade is a transaction that has been executed between two parties where one or more of the terms of the trade do not match. For instance, the parties may have had a misunderstanding on the price, the quantity or the series. See Amendment No. 1, *supra* note 4.

two years has not been applied to a market-maker client of a clearing firm. Due to hand-held trade input terminals and general improvements in trade submission systems, it is nearly impossible for a clearing firm to fall below the deficient clearing firm level of fifty-five percent. Therefore, Exchange Rule 2.30(f)(1) has become obsolete and the Exchange proposes to delete it.

## 2. Statutory Basis

The Exchange proposes to reduce the amount of time in which trades are submitted, resulting in an improved trade comparison process, thereby serving to promote just and equitable principles of trade and to protect investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Act.<sup>11</sup>

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

The CBOE 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. 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 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 Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-98-47 and should be submitted by December 30, 1998.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission believes that the proposal is consistent with the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires an exchange to have rules designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and, in general, to protect investors and the public interest.<sup>14</sup> In particular, the Commission believes that the proposed rule change should encourage members to make timely submissions of trade information by reducing the maximum permitted time to submit trade information from two hours to one hour. As a result, the clearing of options transactions should become more efficient, with a reduction in the number of unmatched trades and quicker resolution of out-trades. The Exchange should also be able to monitor its members more effectively for any problems that might disrupt the clearance and settlement process. The Commission also believes that applying CBOE Rule 2.30 to all members and not just market-makers trading in-person should provide for greater integrity of the trade matching and clearing process. The Commission also believes that it is consistent with the Act to delete obsolete provisions of CBOE Rule 2.30.

The Commission also finds the proposed rule change regarding the assessment of a single fee if a delay is caused by a nominee-employee member of a clearing member is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which states that the Exchange may provide for the equitable allocation of reasonable dues, fees, and other charges among its members. Under CBOE Rule 2.30, the timely submission of each individual member and clearing member is measured separately and a fee imposed only if the individual member or clearing member fails to submit at least eighty percent of its trades in a timely manner. Where a nominee-employee of a clearing member is acting on behalf of the clearing member and where the clearing member is ultimately responsible for the nominee-employee, the Commission believes that the

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 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).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

proposed rule change equitably allocates the cost of incorporating late trade information by only imposing a single fee on clearing members.

The Exchange has requested that the Commission approve the proposal prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register**. Because the Commission believes the proposal should expedite the clearing process, the Commission finds good cause for approving the proposed rule change (SR-CBOE-98-47) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.<sup>16</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-32606 Filed 12-8-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40730; File No. SR-CHX-98-26]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Listing Standards for Equity Linked Debt Securities

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed an amendment to the

<sup>16</sup> An earlier version of the proposed rule change was submitted on March 4, 1998, as CBOE-98-09. The proposed rule change, as amended, was noticed in the **Federal Register** on April 30, 1998. See Release No. 39910, *supra* note 3. The Commission received no comments on the proposed rule change. Subsequently, the Exchange withdrew its proposed rule change. See Withdrawal Letter, *supra* note 3.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.