advisory fees of the Portfolios with those of other funds. Applicants also assert that some Subadvisers use a ''posted'' rate schedule to set their fees, particularly at lower asset levels. Based upon the Advisers' discussions with prospective Subadvisers, applicants believe that some organizations may be unwilling to serve as Subadvisers at any fee rate other than their ''posted'' fee rates, unless the rate negotiated for the Portfolios is not publicly disclosed. Applicants state that requiring disclosure of each Subadviser's fees may deprive the Advisers of their bargaining power while producing no benefit to shareholders, since the total advisory fee the shareholders pay would not be affected.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The Advisers will provide general investment management services to the Portfolios, including overall supervisory responsibility for the general management and investment of the Portfolios' securities, and, subject to review and approval by each Board with respect to its respective Portfolios, will: (a) set the Portfolios' overall investment strategies; (b) recommend and select Subadvisers; (c) allocate and reallocate the Portfolio's assets among Subadvisers in those cases where a Portfolio has more than one Subadviser; (d) monitor and evaluate Subadviser performance; and (e) implement procedures to ensure that the Subadvisers comply with the relevant Portfolio's investment objective, policies, and restrictions.

2. Before a Portfolio may rely on the requested order, the operation of the Portfolio as described in the application will be approved by a majority of the Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a new Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure addressed in condition 3 below, by the sole shareholder before offering shares of such Portfolio to the public.

3. Each Portfolio relying on the requested order will disclose in its prospectus the existence, substance, and effect of the order granted pursuant to this application. In addition, each Portfolio will hold itself out to the public as employing the Adviser/Subadviser structure described in the application. The prospectus will prominently disclose that the Advisers have ultimate responsibility to oversee Subadvisers and to recommend their hiring, termination, and replacement.

4. Within ninety (90) days of the hiring of any new Subadviser, the affected Portfolio will furnish its shareholders all information about the new Subadviser. The information will include any change in the disclosure caused by the addition of a new Subadviser of the Portfolio. The Portfolios will meet this obligation by providing shareholders within 90 days of the hiring of a new Subadviser an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by Aggregate Fee Disclosure.

5. No Trustee, director, or officer of a Trust or the Advisers will own direct or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in any Subadviser except for (a) ownership of interests in the Advisers or any entity that controls, is controlled by or is under common control with the Advisers; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

6. The Advisers will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

7. At all times, a majority of the members of each Board, including a majority of the trustees will be persons who are not ''interested persons'' of the Trusts as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

8. When a Subadviser change is proposed for a Portfolio with an Affiliated Subadviser the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board's minutes, that such change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which the Advisers or the Affiliated Subadviser derives an inappropriate advantage.

9. Each Portfolio will disclose in its registration statement the respective Aggregate Fee Disclosure.

10. At all times, independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust involved. The selection of such counsel will be placed within the discretion of the Independent Trustees.

11. The Advisers will provide the Board of each Trust, no less frequently than quarterly, with information about the Advisers' profitability for each Portfolio using an Adviser/Subadviser structure. Such information will reflect the impact on profitability of the hiring or termination of Subadvisers during the quarter.

12. Whenever a Subadviser to a particular Portfolio is hired or terminated, the Advisers will provide the Board with information showing the expected impact on the Advisers' profitability.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33364 Filed 12–16–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40780; File No. SR–CBOE–98–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System (ROS)

December 10, 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 November 4, 1998, 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 CBOE. On December 9, 1998, the CBOE filed Amendment No. 1 to the proposed rule change with the Commission.[3] On December 9, 1998, the CBOE also filed Amendment No. 2 to the proposed rule change with the Commission.[4] The

---

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

[2] 17 CFR 204.19b–4.

[3] In Amendment No. 1, the Exchange replaced its original proposal. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated December 8, 1998 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange corrected technical errors in the notice. *See* Letter from Timothy Thompson, Director, Regulatory Affairs,

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to adopt new CBOE Rule 6.2A, *Rapid Opening System*, and a related rule change to CBOE Rule 6.2 to govern the operation of, and the eligibility to participate in, the Exchange's new Rapid Opening System.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt rules to govern the operation of, and the eligibility to participate in, the Exchange's new Rapid Opening System (''ROS''). ROS will provide the Exchange the ability to automate the opening of its various option classes, thereby avoiding the lengthier opening rotations that can occur under the present circumstances when there is a large influx of orders entered before or during the opening rotation. As the opening occurs, fill reports on all participating orders will be generated automatically and immediately, opening market quotes and last sales will be disseminated, and market-makers will receive notification of assigned trades.

By entering into open trading more quickly using ROS (and nearly instantaneously in many circumstances), the Exchange believes that its customers will be better served by being able to have their orders addressed in open trading in a more timely manner. Under the current circumstances, in those situations where there is a longer than normal opening rotation, orders entered after the opening rotation begins are locked out and these orders become subject to substantial market risk as the quotes may change from the time the series is opened to the time the rotation is completed. ROS should provide the Exchange's market-makers with the ability to open option classes within seconds of the opening of the underlying security.

Availability of ROS. ROS may be used to open a class of options at the beginning of the day and it may be used to re-open a class of options during the trading day *e.g.*, following a trading halt. The appropriate Floor Procedure Committee (''FPC'') for each option class traded on the floor will determine to what extent ROS will be available, although it is anticipated that ROS will be nearly universally available on the floor and will be used routinely. Because the initial version of ROS will employ the Exchange's AutoQuote system, only those option classes that employ the AutoQuote system may use ROS initially. While most option classes on the floor use the Exchange's AutoQuote system, certain index options (including DJX, NDX, and OEX [5]) and classes traded at certain Designated Primary Market Maker (''DPM'') trading stations do not currently employ the Exchange's AutoQuote system. Those DPMs that do not use the Exchange's AutoQuote system may decide to do so (or may be required to do so by the appropriate FPC) at least at the opening to take advantage of ROS. Later versions of ROS may accommodate inputs from systems other than the Exchange's AutoQuote system.

When ROS is first introduced (currently anticipated to be in December 1998, pending SEC approval), it may be introduced initially to a few classes so that the system can be tested. The Exchange expects ROS to be implemented throughout the floor wherever it may be accommodated soon after its introduction. Pursuant to its authority under CBOE Rule 6.2, the appropriate FPC, chairman or designee may decide where ROS should be used. Once implemented, the Exchange expects ROS will be used routinely and every day for those option classes where it is employed. If there remain option classes where ROS can be employed but is not employed, two Floor Officials may permit an Order Book Official (''OBO'') to use ROS on a case-by-case basis pursuant to Interpretation .01(b) of CBOE Rule 6.2.

Obligations and Eligibility of Market-Makers. Each morning the market-makers who plan to participate on ROS must log onto ROS and identify the classes of options in which they will participate. If ROS was being employed in a DPM trading crowd, the DPM would be expected to participate on ROS. As with RAES, any DPM designee (all of whom are permitted to act as both market-makers and floor brokers) would be entitled to log onto ROS and share equally in any imbalance to trade at the opening price. To participate in the opening, the market-makers must log in prior to the opening or by some other earlier time designated by the appropriate FPC. (Similarly, in a delayed opening or a re-opening during the day, the participating market-makers must be logged on prior to the operation of ROS or by some earlier time.) Any market-maker that will be present at a particular trading station for the opening may log onto ROS for a class traded at that station [6] but once a market-maker has logged onto ROS for that class during an expiration month, that market-maker must log onto ROS any time he is going to be present in the crowd at the opening during the remainder of the expiration cycle. This requirement is intended to ensure that those market-makers who participate in ROS will be obligated to participate on those more volatile or busy days.

Similar to the Exchange's rules governing the eligibility to participate on the Exchange's Retail Automatic Execution System (''RAES''), *i.e.*, CBOE Rule 6.8, there are two other provisions to help ensure the viability of the system in various market situations. First, the appropriate Market Performance Committee (''MPC'') may determine to require a market-maker to log onto ROS for specified classes traded at a particular trading station.

Second, notwithstanding the limitations in proposed CBOE Rule 6.2A

Legal Department, CBOE, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated December 8, 1998 (''Amendment No. 2''). Additional technical amendments corrected errors in the proposal. Telephone conversations between Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, and Kenneth Rosen, Attorney, Division, Commission (December 10, 1998).

[5] These are the Dow Jones Industrial Average, Nasdaq-100, and Standard & Poors 100 index options.

[6] Because the openings generally will occur simultaneously, it will generally be possible to possible on ROS only in those classes traded at one particular trading station on any given day. A market-maker is not permitted to log onto ROS for classes at two or more stations when those openings are expected to occur at approximately the same time.

requiring the market-maker to be present in the crowd for the opening and to log onto ROS by a designated time, if insufficient market-maker participation exists for a particular class, two Floor Officials of the appropriate MPC will have the authority to log onto ROS those market-makers who are members of the trading crowd, as defined in CBOE Rule 8.50, or those Floor Officials may allow market-makers in other classes of options to log onto ROS in such classes.

Participation on ROS will be monitored by the OBOs or DPMs at the particular trading station. The ROS screen in each trading crowd will indicate the number of market-makers that have signed onto ROS. If for any reason the OBO, the DPM, or the participating market-makers believe that the participation rate is inadequate, then the OBO or DPM may call Floor Officials to either have them log on other market-makers or conduct an opening rotation under the manual procedures employed currently.

Participation Rate for ROS. ROS will be designed to assign the contracts to trade for a particular class equally among all participating market-makers for that class to the extent possible. For example, if there are twenty-one contracts for the market-makers who are logged onto ROS to trade after the customer orders have been crossed and there are four market-makers logged onto ROS for that class, then three market-makers would be assigned five contracts and the fourth market-maker would be assigned six contracts.

Orders Participating on ROS and in the Opening. When ROS is employed, all pre-open orders that are routed to the Exchange's Electronic Book will participate automatically in the opening process. All customer orders (both markets and limit orders) without contingencies are eligible to be placed on the Electronic Book prior to the opening. Orders that cannot be placed on the Electronic Book, including broker-dealer and customer contingency orders will be accommodated in the opening manually.

To entitle these orders to participate, the brokers representing these orders must inform the OBO or DPM and the logged-in ROS market-makers of the terms of the order (including limit price and volume) prior to the opening bell or by some earlier time as established by the appropriate FPC. This notification will enable the quantity of orders and any imbalance they represent to be taken into account in establishing the opening price as described below. Although these orders will not be represented in the ROS algorithm (discussed further below), the market-makers will be able to consider the effect of those orders when they decide whether to adjust their AutoQuote values. Once ROS determines the opening price, the participating market-makers will, as described below, trade at the opening price electronically with the imbalance of the booked orders and via open outcry with non-bookable orders that are deserving a fill [7] at the same opening price. The Exchange anticipates that a futrue release of ROS will incorporate non-bookable orders electronically. The Exchange notes that there are few broker-dealer orders entered prior to the opening today and the Exchange believes this is likely to be true when ROS is employed on the floor.

Operation of ROS. To determine a single opening price, AutoQuotes for all series will be provided to ROS. Generally, one participating market-maker will determine the variables that will determine the AutoQuote values. However, any participating market-maker will have the opportunity to improve individual quotes before the AutoQuotes values are sent to ROS. ROS will not open a class until it has received AutoQuotes for all eligible series. The market-makers participating in ROS for a particular option class will determine collectively when they will send the AutoQuote values to ROS. In making this determination, the participating market-makers will have access to information that indicates the total contracts that would be traded on the opening just as do specialists on other exchanges in setting their opening prices today. The information will be available on a screen at each trading station that employs ROS. Each screen will provide the following information: the number of market-makers logged onto ROS for the class, the total delta of all the orders in a particular class of options, the total contracts to trade, the last sale price of the underlying, the AuteQuote calculation values for the underlying. Individuals at the trading station can also access a detail screen that provides information on the number of long and short contracts to trade on a series basis, series AutoQuote values, contracts to trade on a series basis, total delta on a series basis, and thresholds for the class.

Before the start of the trading day, participating market-makers, who together share the obligation to trade at the opening price, will have established thresholds for the aggregate risk and aggregate number of contracts to trade they as a group are willing to assume for a particular class. If the actual aggregate risk and number of contracts to trade at the opening are both below these established thresholds, ROS will automatically open that particular class without any further intervention by the market-makers once AutoQuote has received input of the underlying stock value. In these cases, the opening quotes and last sales will be disseminated immediately. In those cases whether either the aggregate risk or the aggregate contracts to trade exceed the established thresholds, a participating market-maker may manually adjust the AutoQuote values as is done under the opening rotations currently.

To adjust the AutoQuote values, a participating market-maker must touch a button to ''lock'' the particular class. The ''lock'' feature allows market-makers to adjust the AutoQuote values to account for the risk in the positions and contracts to trade, while incoming orders queue (just as orders queue during opening rotations today). Those orders entered during the ''lock'' will not be eligible to participate in the opening. The Exchange expects that the lock feature generally only will be used for very brief periods. Once the market-makers have adjusted AutoQuote, they will send the values of ROS and the class will open. ROS should allow the Exchange to transition into open trading much faster than under the current system and the backlog of orders that sometimes develops during the opening should rarely, if ever, occur.

In both those cases in which the opening is automatic and in those cases where market-makers adjust the AutoQuote values while a class is locked, the actual single opening price that ROS calculates for each series will be determined based upon the bid/ask values sent from AutoQuotes (as they may be adjusted by the market-makers) and the orders contained in the book. The exact price will be sent according to an algorithm, or a set of rules coded into the system, designed to maximize the number of customer orders able to be traded at or between the bid-ask values.[8] Once the price is determined,

[7] These procedures were designed to ensure an order is filled under proposed CBOE Rule 6.2A as if the standard opening procedures were in place. A non-bookable order will be filled by market-makers in the crowd if it is a (1) market order; (2) limit order and the limit price betters the opening price, or (3) limit order and the limit price equals the opening price and equals or exceeds the opposite side of the AutoQuote bid and offer (as it may have been adjusted by the market-makers) that is submitted to ROS. If the non-bookable order is a limit order and the limit price equals the opening price and is between the AutoQuote bid and offer, then this order may be filled against any orders in the Exchange's book.

[8] The algorithm looks for the maximum number of orders to trade at the QutoQuote bid or offer or

all customer orders that should be crossed at that opening price will be crossed, while the balance of orders, if any, will be assigned to participating market-makers if the opening price is at either the AutoQuote bid or offer. If the opening price is between the AutoQuote bid or offer, then no trades will be assigned to participating market-makers. However, any orders that are not executed as part of the opening will remain in the Exchange's Electronic Book and will be reflected in the opening bid or offer improving the AutoQuote bid or offer. Non-bookable orders that were presented to the OBO or DPM prior to the opening in accordance with proposed CBOE Rule 6.2A(a)(ii) will be filled by the market-makers in the crowd at the opening price if the order is deserving of such price. As ROS completes the opening for each class, public customers will receive an electronic fill report for each order traded, quotes and last sales will be disseminated to Options Price Reporting Authority, market-makers will be informed of their participating via an electronic trade notification or a paper notice, and trade match records will be created for clearance.

Surveillance of Market-Maker Procedures. The market-maker participating on ROS will be required to price the contracts fairly, in a manner consistent with their obligations under CBOE Rule 8.7(b)(iv). The Exchange believes that a number of factors including scrutiny by customers and firms representing customer orders will ensure that market-makers adjust the AutoQuote values consistent with their obligations. In addition, if an OBO notices any unusual activity in the setting of AutoQuote values, the OBO will fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's AutoQuote has an audit trail log that details every key stroke employed in the use of AutoQuote. This audit trail report can be studied in the event of any concerns with the way the AutoQuote values were established for ROS.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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. 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–98–48 and should be submitted by January 7, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33365 Filed 12–16–98; 8:45 am]

BILLING CODE 8010–01–M

---

at any price in between. The rules, which the system proceeds through in the following order, are:

(1) If there are more contracts to trade at the bid price than at any other price point, then the opening price will be set at the bid price. If the bid equals, 0, then use the zero bid rule. This rule states if there is a net to sell at 0, any buy volume will be crossed at 1⁄16 with the available sell volume. If there is a balance remaining to sell, the sell volume will be booked at 1⁄16. If there is no buy volume, then, as with the current EBook functionality, there are 0 to sell at 1⁄16 and the orders will be booked at 1⁄16.

(2) If there are more contracts to trade at the offer price than at any other price point, then the opening price will be set at the offering price.

(3) If neither (1) nor (2) is satisfied, then look for the other price point at which the maximum number of contracts will be traded.

(4) There may be no contracts to trade at any of the price points.

(5) If there is only one price point at which the maximum number of contracts may be traded, then open at that price point.

(6) If there are multiple price points at which the maximum number of contracts may be traded then follow rules 7 through 10.

(7) If there is only one price point at which the net between number of contracts to buy and sell is 0 and at which the maximum number of contracts can be traded, then open at that price point.

(8) If there are multiple points where the net between buys and sells is 0 and at which the maximum number of contracts can be traded, then calculate what the best quote will be coming out of rotation, and open at the net zero point closest to the midpoint of the best quote.

(9) If there is not a single net zero closest to the midpoint of the best quote, then use the net change rule (discussed below) to determine the opening price.

(10) If there are no points where the net between buys and sells is zero and at which the maximum number of contracts can be traded, then open at a price at which the maximum number of contracts can be traded and where the net between buys and sells is greater than zero but less than or equal to the total buys or sells at that price. Use the net change rule if necessary.

Net change rule: If the direction of the last underlying change is positive and the option is to a call, open at the higher price, and if it is a put, open at the lower price. Similarly, for negative change, if it is a call option open at the lower price and if it is a put option, open at the higher price.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40763; File No. SR–CHX–98–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Addition of an Interpretation to the Minimum Variation Rule

December 8, 1998.

I. Introduction

On September 25, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act