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. 20549–0609. 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 Amex. All submissions should refer to File No. SR.–AMEX–99–29 and should be submitted by October 12, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 99–24499 Filed 9–20–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41872; File No. SR–CBOE–99–37]

September 13, 1999.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Establish a Membership Ownership Requirement and Assess a Capitalization Transfer Fee Applicable to Designated Primary Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on July 9, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 13, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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

The CBOE proposes to require each Exchange designated primary market maker (''DPM'') to own at least one Exchange membership and to assess a transfer fee on any DPM that is allocated, after June 29, 1999, one or more option classes that has been traded on CBOE or another exchange before June 29, 1999, if that DPM undergoes a change in its capitalization during the five year period following the allocation of the pre-June 29, 1999 option class.

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 for 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 Exchange is proposing two rule changes applicable to DPMs. These rule changes are part of the Exchange's initiative to expand its DPM program to allow for the appointment of DPMs in most, if not all, equity option classes traded on the Exchange. This initiative was approved in principle by the Exchange's membership as part of a membership vote that was held on June 29, 1999.

a. Requirement That DPM Own an Exchange Membership

The Exchange proposes to require that each DPM own at least one Exchange membership. An Exchange membership would include a transferable regular membership of the Exchange or a Chicago Board of Trade (''CBOT'') full membership that has effectively been exercised pursuant to Article Fifth(b) of the CBOE Certificate of Incorporation.[4] A DPM would be deemed to satisfy this ownership requirement if the DPM or a senior principal of the DPM owned an Exchange membership. In addition, no single Exchange membership could be used to satisfy this ownership requirement for more than one DPM. DPMs would be given 18 months from the effective date of this proposed rule change to satisfy the requirement.

The purpose of this ownership requirement is to assure that DPMs have a long-term commitment to the Exchange given the important functions they perform and to recognize that DPMs are a pivotal component of the Exchange's marketplace.

b. Assessment of Transfer Fee

The Exchange is also proposing to assess a transfer fee on certain DPMs that change their capitalization during a defined five-year period. This transfer fee would only be assessed on those

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

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly Riley, Attorney, Division of Market Regulation, SEC, dated July 12, 1999 (''Amendment No. 1''). In Amendment No. 1, the Exchange re-designated the rule change as amendments to current CBOE Rule 8.80. The original filing amended proposed rules that are currently pending with the Commission and not approved as of the time of this filing.

[4] Pursuant to Article Fifth(b) of the Certificate of Incorporation and CBOE Rule 3.16(c), any member of the CBOT who is an Eligible CBOT Full Member or an Eligible CBOT Full Member Delegate is entitled to become a member of CBOE. Any eligible CBOT member who has effectively exercised this entitlement to be a CBOE member is referred to as a CBOT exerciser member of CBOE.

DPMs that have been allocated one or more options classes that have been traded on the CBOE or other exchange prior to June 29, 1999. Furthermore, the transfer fee will only be imposed on those DPMs that have been allocated a pre-June 29, 1999 option after June 29, 1999. The five-year period will begin as of the allocation date of the pre-June 29, 1999 option.

For purposes of this transfer fee, a change in the capitalization of a DPM would be deemed to include any sale, transfer, or assignment of any ownership interest in the DPM or any change in the DPM's capital structure, voting authority, or distribution of profits or losses.

The transfer fee would generally be equivalent to an applicable percentage of the larger of: (i) the dollar amount of the change in a DPM's capitalization attributable to pre-June 29, 1999 option classes allocated to the DPM after June 29, 1999 or (ii) the value of the change in the DPM's capitalization attributable to pre-June 29, 1999 option classes allocated to the DPM after June 29, 1999, as determined by a formula for ascertaining an approximate value of that portion of the transaction. The applicable percentage to be applied in determining this transfer fee would be: 50% in the first year of the five-year period during which the DPM is subject to this transfer fee, 40% in the second year, 30% in the third year, 20% in the fourth year, and 10% in the fifth year.

Specifically, this transfer fee would be equal to the larger of two figures determined by the following formulas. The first formula to determine the dollar amount of change in the DPM's capitalization attributable to pre-June 29, 1999 options classes is: (the applicable percentage listed above based on the year) × (the actual dollar value of the change in capitalization of the DPM as determined by the Exchange) × (the percentage of the DPM's market-maker trading volume in its capacity as a DPM in the previous 12 months attributable to pre-June 29, 1999 option classes allocated to the DPM after June 29, 1999).

With respect to the first formula, the Exchange would determine the actual dollar value of the change in capitalization of the DPM by examining the DPM's organizational documents, the documents related to the transactions, and the other information provided by the DPM concerning the transaction to ascertain the dollar value of the change in capitalization that is revealed by that information.

If not all of the pre-June 29, 1999 option classes allocated to a DPM following that date have been traded by the DPM for at least 12 months, the Exchange would determine the percentage of the DPM's market-maker trading volume attributable to those option classes based on the time period since the last such option class was allocated to the DPM for purposes of the first formula.

The second formula to determine the value of the change in the DPM's capitalization attributable to pre-June 29, 1999 option classes is: (the applicable percentage listed above based on the year) × (the current level of overall DPM profitability per contract as determined by the Exchange based on DPM financial reporting) × (the DPM's market-maker trading volume in the previous 12 months in pre-June 29, 1999 option classes allocated to the DPM after June 29, 1999) × (2) × (the percentage change in the DPM's capitalization as determined by the Exchange).

With respect to the second formula, the Exchange would determine the current level of overall DPM profitability per contract based on DPM financial reporting by examining FOCUS Reports submitted to the Exchange by DPMs during the prior 12 months. Specifically, the Exchange would determined the total net profit reported by DPMs on FOCUS Reports submitted during the prior 12 months and divide this total net profit amount by the total market-maker trading volume of DPMs (in their capacity as DPMs) in the prior 12 months to arrive at a proxy for the current level of overall DPM profitability per contract. If a DPM has other operations in addition to its DPM operation for which financial information is reflected on its FOCUS Reports, the Exchange may exclude the data related to that DPM from this calculation so that the calculation is not skewed by the level of profitability from non-DPM activities.

If not all of the pre-June 29, 1999 option classes allocated to a DPM following that date have been traded by the DPM for at least 12 months, the Exchange would determine the DPM's market-maker trading volume in those option classes during the time period since the last such option class was allocated to the DPM and convert that volume number to an annualized amount in order to determine the DPM's market-maker trading volume figure in those classes for the purposes of the second formula.

The multiple of 2 in the second formula is intended to represent two calendar years of assumed DPM operation.

Finally, the Exchange would determine the percentage change in the DPM's capitalization for purposes of the second formula by examining the DPM's organizational documents, the documents related to the transaction, and the other information provided by the DPM concerning the transaction in order to ascertain this percentage change as revealed by that information.

This transfer fee has three primary purposes. First, the transfer fee is designed to provide those who own DPMs that are allocated one or more existing option classes with a significant incentive to sufficiently capitalize the DPM and to have sufficient capital of their own to operate the DPM given that any transaction to transfer an interest in the DPM in order to raise capital in the subsequent five years will be subject to the transfer fee. In addition, the Exchange believes that allocating an existing option class to a DPM is a valuable right because of the established order flow and contract volume. Therefore, the Exchange believes it would be inequitable to allow those who own a DPM organization that is allocated one or more existing option classes to shortly thereafter sell this right by transferring all or a portion of their interest in the DPM organization to other parties. Accordingly, a second purpose of the transfer fee is to discourage these types of transactions, or if they occur, to require a significant portion of the value of the transaction to be paid to the Exchange. Third, as with the proposed ownership requirement, the transfer fee will contribute toward assuring that DPMs have a long-term commitment to the Exchange.

2. Basis

The proposed ownership requirements and transfer fee will contribute toward assuring that DPMs have a long-term commitment to the Exchange. Moreover, the proposed transfer fee will provide DPMs with significant incentive to be sufficiently capitalized while at the same time discouraging transfer of interest in DPMs that are inequitable to the Exchange and its membership. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5)[6] in particular, because it is designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

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 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

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. 20549–0609. 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–99–37 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 99–24496 Filed 9–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41863; File No. SR–CBOE–99–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Match Size Limits of the Automatic Execution System of the Philadelphia Stock Exchange, Inc.

September 10, 1999.

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 August 25, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The CBOE is proposing to increase the size limit of orders in certain classes of options contracts which are eligible for entry into the CBOE's Retail Automatic Execution System (''RAES'') to match the size limits of orders which will be eligible for entry into the automatic execution system of the Philadelphia Stock Exchange, Inc. (''Phlx'')

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 include 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.

[7] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

As of the date of filing, CBOE Rule 6.8(e) generally limits the size of CBOE RAES orders to twenty or fewer contracts.[3] Notwithstanding the provision, Interpretation and Policy .01 under that rule permits the appropriate FPC to increase the size in one or more classes of multiply listed equity options eligible for entry on RAES to the extent necessary to match the size of orders in the same options class eligible for entry into the automated execution system of any other options exchange. Interpretation and Policy .01 requires that the effectiveness of the increase in options size be conditioned on the CBOE making a filing with the Commission under Section 19(b)(3)(A) of the Act.[4]

As of August 24, 1999, options on Bank America (BAC), Citigroup (C), Cendant (CD), Conoco (COC), Frontier (FRO), Georgia Pacific (GP), AT&T Liberty Media Group (LMG), Lucent (LU), and LHS Group (QLH) are dually listed on the CBOE and the Phlx. The current size limit eligible for automatic execution of Phlx orders is 30 contracts for BAC, and 25 contracts for C, CD, COC, FRO, GP, LMG, LU, and QLH. These size limits could be increased by Phlz up to 50 contracts pursuant to Phlx Rule 1080(c). The CBOE therefore anticipates that if it raises it RAES eligible limit to match the current size limits of the Phlx in BAC, C, CD, COC, FRO, GP, LMG, LU, and QLH, the Phlx in turn may potentially raise its own limits again.

Therefore, pursuant to CBOE rule 6.8 and Interpretation and Policy .01, the CBOE proposes to increase the RAES eligible order size limit in BAC, C, CD, COC, FRO, GP, LMG, LU, and QLH to match the eligible order size on the automatic execution system of the Phlx, effective August 25, 1999. Currently, this will involve an increase to a 30 contract size limit for BAC, and 25 contracts for C, CD, COC, FRO, GP, LMG, LU, and QLH. If the Phlx in response, increases its own size limit for automatic execution in response, the CBOE in turn will match such increases up to 50 contracts.[5]

[3] On September 1, 1999, the Commission approved a CBOE proposal to increase generally the size limits of RAES orders from 20 to 50 contracts. *See* Securities Exchange Act Release No. 41821.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] In actuality, on August 25, 1999, the Phlx order size limits for the CBOE to match were 30 contracts for BAC and 25 contracts for C, CD, COC, FRO, GP,