

the liquidation were paid by UBS A.G., applicant's investment adviser.

Filing Dates: The application was filed on July 8, 1999, and amended on August 27, 1999.

Applicant's Address: 200 Clarendon Street, Boston, Massachusetts 02116.

UBS Private Investor Funds, Inc. [File No. 811-7431]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 1998, applicant transferred its assets to The Brinson Funds (the "Acquiring Fund") in exchange for shares based on net asset value per share. All expenses incurred in connection with the merger were paid by UBS A.G., applicant's investment adviser, and Brinson Partners, Inc., the Acquiring Fund's investment adviser.

Filing Dates: The application was filed on July 9, 1999, and amended on August 30, 1999, and September 23, 1999.

Applicant's Address: 200 Clarendon Street, Boston, Massachusetts 02116.

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. 34-41904; File No. SR-CBOE-99-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Change the Participation Entitlement of Designated Primary Market-Makers

September 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 23, 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. 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 change the participation entitlement of designated primary market-makers ("DPMs").

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 section 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

A DPM's right to participate as principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under these principles, if a DPM is first to respond with the best bid (offer) in response to a request for a market from a member not acting on behalf of the DPM, the DPM is entitled to participate up to 100% in any resulting transaction. In addition to the rights granted by CBOE Rule 6.45, current CBOE Rule 8.80(c)(7)(ii) grants each DPM a right to participate "pro rata," with the market-makers present in the trading crowd. This pro-rata right applies to any transaction in a security that has been allocated to the DPM if the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45.³ Because the term "pro rata" is not precisely defined by current CBOE Rule 8.80(c)(7)(ii), the scope of that term, and hence the DPM participation right, has historically been interpreted by the Exchange's Modified Trading System Appointments Committee ("MTS

Committee"), which is the Exchange committee responsible for appointing DPMs and overseeing the Exchange's DPM program.

Since 1993, the MTS Committee has interpreted a DPM's participation right in transactions that occur in an allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to consist of the following: an initial 40% participation right, a 30% participation right when average daily volume in the security over the previous calendar quarter reaches 2501 contracts, and no guaranteed participation right when average daily volume in the security over the previous calendar quarter reaches 5,000 contracts. Additionally, the MTS Committee determined to maintain all multiply traded securities at the 40% participation level until further notice. This DPM participation entitlement has been communicated to the Exchange's membership in numerous Exchange circulars that have been issued to the Exchange's membership since 1993.

The MTS Committee has now decided to propose that the level of participation that a DPM may assert in transactions that occur at the DPM's previously established principal bid or offer be changed to 30%. Except as described below, this 30% participation right would apply to all classes that are allocated to DPMs regardless of the volume in a particular class and regardless of whether or not the class is multiply listed.

The MTS Committee believes that this proposed single-level DPM participation entitlement will be easier for members to apply than the current DPM participation entitlement formula. Under the current formula, as described above, the participation right varies from class to class based on volume level, which may change the participation right for a class each calendar quarter and based on a class's multiple list status.

Additionally, the MTS Committee believes that the proposed participation entitlement will be more equitable. The primary purpose of the DPM participation right is to provide Exchange members with an incentive to become and remain DPMs. Moreover, DPMs are required to assume additional affirmative obligations which are not imposed on other members. These additional obligations include, among other things, the obligation to be present at the trading post throughout every business day, the obligation to participate at all times in automated execution and order handling systems

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The right of a DPM to participate pro-rata, however, does not include trades executed on the Exchange's Retail Automatic Execution System. Telephone call between Arthur Reinstein, Assistant General Counsel, CBOE, and Kelly Riley, Attorney, Division of Market Regulation, SEC, on July 29, 1999.

such as the Exchange's Retail Automatic Execution System (RAES), and the obligation to act as the Exchange's Retail Automatic Execution System (RAES), and the obligation to act as an order book official and to maintain the public order book. Since these obligations exist regardless of the volume level in a DPM allocated class, the 30% DPM participation right is proposed to be applicable regardless of whether the volume level in the class exceeds a certain volume threshold as is required in the current formula. The MTS Committee also believes that a DPM participation right of 30% is sufficient to provide the requisite incentive for members to become and remain DPMs (as opposed to the 40% DPM participation right that is applicable in most classes that are allocated to DPMs under the current participation entitlement formula).

Although a DPM's participation right will generally be 30% as provided above, the MTS Committee would retain its current authority to condition a DPM's appointment in accordance with the Rules by establishing a lower participation right in a class or classes allocated to the DPM. For example, current CBOE Rule 8.80(b)(3) permits the MTS Committee to specify conditions with respect to a DPM appointment at the time the appointment is made, and current CBOE Rule 8.80 generally authorizes the MTS Committee to take remedial action against a DPM (including conditioning the DPM's appointment) if the DPM fails to satisfactorily perform its functions or incurs a material financial, operational, or personnel change.

The Exchange proposes to publish a circular notifying the Exchange's membership of the proposed DPM participation right upon its effectiveness and to publish to the membership and keep current a list setting forth the DPM participation right in any classes for which a DPM's participation entitlement is lower than 30%.

The Exchange recently submitted a rule filing to the Commission which proposes to update and reorganize the Exchange's rules relating to DPMs.⁴ One part of the proposed rule change, which is currently pending before the Commission, is proposed CBOE Rule 8.87 which proposes to codify the authority of the MTS Committee to determine the appropriate participation right for DPMs. Specifically, proposed CBOE Rule 8.87 provides that, subject to the review of the Board of Directors, the

MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs. In addition, proposed CBOE Rule 8.87 provides that, in accordance with this established formula, each DPM shall have a right to participate for its own account with the market-makers present in the trading crowd in transactions in the DPM's allocated securities that occur at the DPM's previously established principal bid or offer. The DPM participation right proposed by this rule change is consistent with the DPM participation entitlement provided for under proposed CBOE Rule 8.87 and would continue to be applicable following the approval of CBOE's pending rule filing to update and reorganize the DPM rules. The MTS Committee would also continue to have the authority to condition a DPM's appointment by establishing a lower participation right in a class or classes allocated to a DPM in accordance with the proposed DPM rules, including proposed CBOE Rules 8.83(d) and 8.90 (which contain similar provisions to those contained in current CBOE Rule 8.80(b)(3) and current CBOE Rule 8.80 which are discussed above).

The MTS Committee intends to continue to periodically review the DPM participation entitlement to ensure that it remains at an appropriate level given the market environment that prevails at the time, and, accordingly, that the Exchange may propose to the DPM participation entitlement in the future.

2. Basis

The Exchange believes that the proposed rule change will improve the operation of the DPM trading system by making the DPM participation entitlement more equitable and easier for members to apply while retaining the incentive for members to become and remain DPMs. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5)⁵ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

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, NW, Washington DC 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 submission should refer to File No. SR-CBOE-99-32 and should be submitted by October 21, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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⁴ Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (File No. SR-CBOE-98-54).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).