

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 BSE. All submissions should refer to file number SR-BSE-2002-02 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45542; File No. SR-CBOE-2001-65]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange Inc. To Permit a Single Response From Market Makers to a Request To Execute a Large Order

March 12, 2002.

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 December 17, 2001, 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. The CBOE filed an amendment to the proposed rule change on March 6, 2002.<sup>3</sup> The 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 amend CBOE Rule 8.7 to permit a single response from market makers to a request to execute a large order. The text of the proposed rule change is set forth below. Additions are in italics.

#### CHAPTER VIII

#### Market-Makers, Trading Crowds and Modified Trading Systems Section A: Market-Makers

#### Rule 8.7 Obligations of Market Makers

(a)-(c) No change.

...Interpretations and Policies:

.01-.10 No change.

.11 *The obligation of Market-Makers to make competitive markets under Rule 8.7 does not preclude members in a trading crowd from discussing a request for a market that is greater than the RAES order eligibility size for that option class, for the purpose of making a single bid (offer) based upon the aggregate of individual bids (offers) by members in the trading crowd, but only when the member representing the order asks for a single bid (offer). Whenever a single bid (offer) pursuant to this paragraph is made, such bid (offer) shall be a firm quote and each member of the trading crowd participating in the bid (offer) shall be obligated to fulfill his portion of the single bid (offer) at the single price.*

#### 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 CBOE is submitting the proposed rule change pursuant to subparagraph IV.B.j of the Commission's September 11, 2000 Order,<sup>4</sup> which requires that certain options exchanges, including the CBOE, adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class \* \* \*." Although market makers compete against each other and, when applicable, against the Designated Primary Market Maker ("DPM"), Lead Market Maker, or Supplemental Market Maker ("SMM"), the proposed new Interpretation and Policy .11 to CBOE Rule 8.7 would expressly provide for a limited situation where the CBOE believes that market makers necessarily are required to coordinate with each other.<sup>5</sup> Specifically, proposed Interpretation and Policy .11 to CBOE Rule 8.7 would permit market makers to coordinate in the limited situation where a member requests a single bid or offer from the trading crowd for an order that is greater in size than the Exchange's Retail Automatic Execution System ("RAES") order eligibility size for that option class, as determined by the Exchange's appropriate Floor Procedure Committee.

When a request to buy or sell a large number of options is submitted to a trading crowd, the CBOE believes that it is usually the case that the customer on whose behalf the request is made wants to know promptly at what single price all of the options represented by the request could be bought or sold. In the exercise of his fiduciary duty, the member representing such a large order is permitted to request a jointly made single bid or offer to ensure that his

<sup>3</sup> See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), dated March 4, 2002 ("Amendment No. 1"). Amendment No. 1 deletes a footnote from the original filing that stated that a member would be viewed as having requested a single bid or offer if the member expressed to a trading crowd that generally he or she expected a single bid or offer for any order of greater than the RAES order eligibility size, unless he or she requested otherwise in a specific circumstance.

<sup>4</sup> See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

<sup>5</sup> As set forth in CBOE Rules 8.80 and 8.85, respectively, the term "market-makers" includes DPMs and each DPM is obligated to fulfill all of the obligations of a market-maker under CBOE rules, in addition to fulfilling the specific obligations of a DPM.

<sup>5</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.

customer's order is completely filled at the best price. Without asking for such a joint response, the member would assume a risk that the market would move substantially as the member attempts to execute the whole order in pieces against individual market makers at different prices.<sup>6</sup>

Proposed Interpretation and Policy .11 to CBOE Rule 8.7.11 would allow CBOE market makers to respond to a member's request for a quick and certain market. The proposed rule change would permit market makers jointly to discuss a request from a member for a single order that is greater in size than the RAES order eligibility size for that option class, in order to provide a single bid or offer, based upon the aggregate of individual bids or offers by members in the trading crowd. Such coordination would only be permitted in situations where the member representing the order requests a single bid or offer. When a single bid or offer made in response to a request results in the order being executed, the order will be apportioned among the market makers who participated in making the single bid or offer according to the number of contracts each market participant committed to trading, and each market maker shall be obligated to fulfill his portion of the single bid or offer at the single price.<sup>7</sup>

The CBOE believes that proposed Interpretation and Policy .11 to CBOE Rule 8.7 would enhance competition among markets. CBOE's market makers must be able to respond to requests for a single large order from a member in the face of competition from other exchanges that have specialists who are better able to provide a single response to large bids and offers. Moreover, because proposed Interpretation and Policy 8.7.11 would allow CBOE market makers to respond to a specific request, the CBOE believes it would enhance the ability of the Exchange to respond to requests for immediate executions at disseminated prices.

<sup>6</sup> Without asking for a joint response, a member may not know until it is too late whether he will have satisfied the customer's entire order if he fills the order in pieces against individual market-makers at different prices. The CBOE believes that a member who does not ask for a joint response takes a risk that the market will move substantially as the member executes the order in parts against different market-makers at different prices against whom he must mark up different order tickets or against whom he must make separate inputs into his electronic trading unit.

<sup>7</sup> The Exchange has submitted another proposed rule change (SR-CBOE-2002-08) relating to allocation of trades, including trades pursuant to proposed Interpretation and Policy .11 to CBOE Rule 8.7.11.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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

The proposed rule change, as amended, would provide for limited joint participation among competing CBOE market makers in a trading crowd in certain circumstances. The Exchange believes this limited joint participation is justified by the benefits to the marketplace from this proposal. According to the Exchange, the effect of this aggregate response proposal would be to allow the market maker trading crowds to compete more effectively for order flow with specialists from other options exchanges by providing enhanced opportunities for best execution of customer orders on the CBOE. As a result, the Exchange believes the limited joint activity described in this rule proposal is justified by and furthers the objectives of Section 11A(a)(1)(C)(ii) of the Act<sup>10</sup> by assuring fair competition among markets. The Exchange believes that the proposed rule also is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

### 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 CBOE consents, the Commission will:

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii).

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

(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, as amended, 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 filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-2001-65 and should be submitted by April 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45538; File No. SR-CSE-2002-02]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Incorporated To Amend Trading Rules To Eliminate References to Fractional Price Variations

March 12, 2002.

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 March 4, 2002, The Cincinnati Stock Exchange, Incorporated ("CSE" or "Exchange") filed with the Securities and Exchange

<sup>12</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.