

in the aggregate. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 16, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-4931 Filed 3-2-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Industry Guides, SEC File No. 270-69, OMB Control No. 3235-0069
Notice of Exempt Roll-Up Preliminary Communication, SEC File No. 270-396, OMB Control No. 3235-0425.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Industry Guides are used by registrants in certain specified industries as disclosure guidelines in preparing Securities Act of 1933

("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") registration statements as well as other Exchange Act filings. The information filed with the Commission using the industry guides permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The information required by the industry guides is filed on occasion and is mandatory. All information is provided to the public. The Commission estimates for administrative purposes that the total annual burden is one hour and the total number of respondents is one.

Notice of Exempt Preliminary Roll-Up Communication ("Notice") is required to be filed by a person making such a communication by Exchange Act Rules 14a-2(b)(4) and 14a-6(a). The Notice provides public information regarding the person's ownership interest and any potential conflicts of interest. The Notice is filed on occasion and the information required is mandatory. All information is provided to the public upon request. The Notice takes approximately .25 hours per response and is filed by 4 respondents for a total 1 annual burden hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-5245 Filed 3-2-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44005; File No. SR-CBOE-00-60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Change Its Membership Application Posting Process and Clarify Its Membership Rules

February 26, 2001.

I. Introduction

On November 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule to change its membership application posting process and to make some clarifying revisions to its membership rules. The Commission issued a release seeking comment on the proposed rule change³ which was published in the **Federal Register** on January 18, 2001. No comments were received on the proposal. On January 12, 2001, CBOE filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange propose to change its membership application posting process and make some clarifying revisions to its membership rules.

Under CBOE Rule 3.9(e), a posting must be included in the Exchange Bulletin and on the Exchange Bulletin Board with respect to any application for membership, any application from a current member to change membership capacity statuses, and any application to change Clearing Members (unless the posting requirement is waived under certain specified circumstances in accordance with the provisions of the rule). CBOE Rule 3.9(e) also provides that the posting period on the Exchange Bulletin Board be no less than ten days, and that the Exchange's Membership Committee shall determine the required posting period for each of these types of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43827 (January 9, 2001), 66 FR 4874.

⁴ In Amendment No. 1, CBOE made minor technical changes to the rule text that do not need to be published for comment. See letter from Arthur B. Reinstein, Associate General Counsel, CBOE, to Sapna Patel, Attorney, Division of Market Regulation ("Division"), Commission (January 11, 2001) ("Amendment No. 1").

applications in conformity with this minimum time period. The posting period for each of these application categories is fourteen days. The posting must set forth the name of the applicant and the application request. Its purpose is to provide members with an opportunity to submit information concerning an applicant that may bear on the applicant's qualifications and fitness for membership under the Exchange's rules. Under CBOE Rule 3.9(h), an application may not be approved until any applicable posting requirement has been satisfied.

The Exchange represents that two factors have caused it to propose changing its membership application posting process. First, the Exchange represents that it receives no submissions from members in response to the postings for the vast majority of applicants that are posted to the membership on the Exchange's Bulletin Board as part of the posting process. Second, the Exchange represents that it has a less extensive and shorter application process for current members that are applying to change membership capacity statuses and for member applicants that have been a member at any time during the last six months. In addition, the Exchange represents that it is able to process these applications well before the expiration of the posting period in most cases. According to the Exchange, the vast majority of these applicants are required to wait for a period of time following the completion of the processing of their applications for their new membership capacities to become effective. The Exchange believes that this results in inefficiency in the conduct of business on the Exchange, as well as inconvenience to these applicants.

The Exchange therefore proposes to change its membership application posting process to eliminate this inefficiency and inconvenience, while at the same time preserving the ability of members to submit information concerning the qualifications and fitness for membership of applicants. Specifically, the Exchange proposes to amend CBOE Rule 3.9(e) to eliminate the posting period for current members that are applying to change membership capacity statuses and for member applicants that have been a member during the last six months. Additionally, the Exchange intends to notify its membership via circular that the Membership Department will accept submissions concerning any current or former member at any time (in contrast to the current limited formal submission period during the posting period) and that these submissions will be retained

in the member's membership file.⁵ Subsequently, if a current or former member submits any membership application and there is a submission for that current or former member in the membership file at the time of submission of the application, the submission concerning that current or former member will be reviewed and considered in the same manner that occurs under the posting process.

Further, the Exchange proposes to retain the posting period requirement for new membership applicants (*i.e.*, those membership applicants that have never been a member or that have not been a member during the last six months). The Exchange represents that the posting period generally does not result in a delay in processing these applications because they are subject to a more extensive and longer application process that takes more than fourteen days (during which there is adequate time to complete a fourteen day posting). In addition, the Exchange proposes to retain the posting period for an application to change Clearing Members (which in the vast majority of cases is waived pursuant to the current provision of CBOE Rule 3.9(e), which provides for the waiver of this posting period if the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions consents to such a waiver).

The Exchange also proposes to make the following clarifying changes to its membership rules. The Exchange proposes to revise CBOE Rule 3.9(f) to clarify those categories of membership applicants for which the Exchange does not conduct a background investigation due to the fact that the applicant is a current member, the applicant was recently a member, or the Exchange recently conducted a background investigation concerning the applicant. Specifically, the Exchange proposes to revise CBOE Rule 3.9(f) to clarify that the Membership Department is not required under CBOE Rule 3.9(f) to investigate the following categories of applicants: (i) Any associated person applicant who is a current member, (ii) any member applicant that was a member during the last six months before the date of receipt of that applicant's membership application by the Membership Department, and (iii) any member or associated person

⁵ The CBOE indicated that the circular will be detailed and widely disseminated. The circular will be attached to the back of the CBOE rule book and made readily available to the public. Telephone conversation between Arthur B. Reinstein, Associate General Counsel, CBOE, and Sapna C. Patel, Attorney, Division, Commission (January 5, 2001).

applicant that was investigated by the Membership Department during the last six months before the date of receipt of that applicant's application by the Membership Department. In addition, the Exchange proposes to revise CBOE Rule 3.9(f) to clarify that the Membership Department retains the discretion to investigate any applicant that is not required to be investigated under CBOE Rule 3.9(f) if the Membership Department determines that a background investigation is warranted under the circumstances.

Further, the Exchange proposes to revise Rule 3.13(c) to clarify that the payment for the purchase of a membership by a certified or cashier's check must be in the amount of the purchase price and to permit payment via a wire transfer.

The Exchange also proposes to clarify the provisions of CBOE Rule 3.14(c)(iv). CBOE Rule 3.14(c)(iv) sets forth one of the four circumstances pursuant to which a membership may be transferred without going through the normal auction process for the purchase and sale of Exchange memberships. Specifically, CBOE Rule 3.14(c)(iv) provides that the owner of a transferable membership may request the transfer of the membership to an individual or organization which is a partner or shareholder of the transferor as part or all of a distribution of the transferor.⁶ The Exchange proposes to revise CBOE Rule 3.14(c)(iv) to clarify that the transferee must have at least a fifty percent interest in the transferor. Without this provision, a person could avoid the normal membership auction process by becoming a nominal partner or shareholder in a member organization and then having the member organization transfer the membership to that partner or shareholder. Further, the Exchange proposes to revise CBOE Rule 3.14(c)(iv) to delete the word "liquidation" because of confusion between a liquidation distribution and a non-liquidation distribution (given that an entity can have partial liquidation in which it does not distribute all of its assets and continues in operation following the partial liquidation). Because the Exchange has interpreted Rule 3.14(c)(iv) to permit membership transfers in connection with partial liquidation distributions, and because the Exchange believes there is no meaningful distinction in this context between a partial liquidation distribution and a regular distribution, the Exchange proposes to delete the

⁶ Under CBOE Rule 3.3.01, the transferee could also be a limited liability company member if the transferor were a limited liability company.

word "liquidation" to make it easier for members to understand CBOE Rule 3.14(c)(iv).

Further, the Exchange proposes to clarify the nature of the security interest received by the grantee of an Authorization to Sell under CBOE Rule 3.14(d)(viii) which allows an owner of a transferable membership to voluntarily grant to another member an Authorization to Sell the membership. The Exchange represents that the grantee of an Authorization to Sell is vested with all of the authority provided for under the Exchange's Constitution and Rules relating to the sale of the membership. Pursuant to CBOE Rule 3.15(b), the grantee of an Authorization to Sell also has the right on the sale of the membership to submit claims against the grantor that are related to the grantor's Exchange business activities, which will be satisfied out of the proceeds of the sale of the membership. CBOE Rule 3.14(d)(viii) provides that the grant of an Authorization to Sell a membership includes the grant of a security interest in any proceeds from the sale of the membership that the grantee of the Authorization to Sell is entitled to receive under CBOE Rule 3.15(b). The Exchange proposes to revise CBOE Rule 3.14(d)(viii) to clarify that the grant of an Authorization to Sell also includes the grant of a security interest in the membership to the extent necessary to establish the priority of the security interest in the membership sale proceeds that the grantee is entitled to receive under CBOE Rule 3.15(b). The Exchange has interpreted CBOE Rule 3.14(d)(viii) to provide for a security interest in the membership and believes that the grant of a security interest is fairly and reasonably implied from the existing language of CBOE Rule 3.14(d)(viii). The Exchange simply proposes to revise CBOE Rule 3.14(d)(viii) to make the language of Rule more explicit.

The Exchange also proposes to revise CBOE Rule 3.24, the Exchange's Member Death Benefit Rule,⁷ to make clear that the term "active member" under that rule only includes individual members and is not intended to include associated persons who are not individual members pursuant to the Exchange's rules. Specifically, the definition of the term "active member"

in CBOE Rule 3.24(c) would be revised to replace the words "natural person" in that definition with the words "individual member." The remainder of definition of "active member" in CBOE Rule 3.24(c) would not be revised. Thus, as revised, the definition of "active member" contained in CBOE Rule 3.24(c) would state that the term "active member" shall mean any individual member who is a nominee of a member organization, a Chicago Board of Trade exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder application to a national securities exchange.⁸ In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of an exchange be designed 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.

The Commission believes that the changes to the Exchange's membership application posting process, under CBOE Rule 3.9(e), will help the Exchange streamline its application process and avoid unnecessary delay while preserving the ability of members to provide input. Although the Exchange proposes to amend CBOE Rule 3.9(e) to eliminate the requirement that there be a posting period for current members that are applying to change membership capacity statuses and for member applicants that have been a member during the last six months, the Exchange has, at the same time, preserved members' ability to submit information concerning the qualifications and fitness for membership of applicants. The Exchange will notify its membership via circular that its Membership Department will accept submissions concerning any current or former member at any time and that these submissions will be retained in the member's membership file. These submissions will then be reviewed the same as under the Exchange's posting

process if a current or former member submits a membership application.

In addition, the Commission finds that it is appropriate for the Exchange to retain its current posting periods for new membership applicants and for applications to change Clearing Members because the application process takes more time.

The Commission believes that clarifying CBOE Rule 3.9(f) on background investigations, CBOE Rule 3.13(c) on the purchase of memberships, CBOE Rule 3.14(c)(iv) on the sale and transfer of memberships, and CBOE Rule 3.24(c) on who is considered an "active member" under the Member Death Benefit Rule, will provide members with better guidance as to the meaning of these rules.

The Commission therefore finds that the Exchange's proposed rule change is consistent with the Act because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing a more efficient membership application posting process and by clarifying its membership rules.

IV. Conclusion

For the foregoing reasons, the Commission finds that CBOE's proposal to change its membership application posting process and to make some clarifying revisions to its membership rules, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-00-60), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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⁷ CBOE Rule 3.24(b) provides that the following individuals are eligible for the Member Death Benefit; (i) Any individual who is an active member at the time of his or her death; and (ii) any individual who (a) was an active member within ninety days prior to the date of his or her death, and (b) was an active member during at least 274 out of the 365 days preceding the date of his or her termination from active member status.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).