

approval of CBOE Rule 15.12, to require testing and reporting with respect to the implementation of decimal pricing under the broad authority granted it to enforce the provisions of the Act and to ensure the safety of its marketplace. More specifically, CBOE Rule 4.2 prohibits members from engaging in conduct that violates the Act or rules and regulations thereunder; CBOE Rule 4.3 provides the Exchange authority to approve the maintenance of any wire connections between its members and other members or non-members; and CBOE Rule 4.10 gives the President or the Chairman of the Exchange the right to impose such conditions and restrictions on a member as either may consider reasonably necessary for the protection of the Exchange and the customers of such member. Notwithstanding this existing authority, however, the Exchange believes that its membership would be better served by having its specific intentions with respect to mandatory decimal pricing testing defined in a stand-alone rule.

The proposed CBOE Rule 15.12 would expire automatically upon the completion of decimal pricing implementation.

2. Statutory Basis

The CBOE believes proposed CBOE Rule 15.12, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with Section 6(b) of the Act⁵ in general and further the objectives of Section 6(b)(5)⁶ in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

C. 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.

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 to the proposed rule change.

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

Because the foregoing rule change is concerned solely with the

administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and subparagraph (f)(3) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-00-20 and should be submitted by July 12, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42930; File No. SR-CBO-99-51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Increase the Maximum Order Size Eligible for Automatic Execution

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 September 1, 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 amend its rules governing the operation of its Retail Automatic Execution System ("RAES") to increase the maximum size of orders eligible for execution on RAES, and make conforming changes to CBOE's firm quote rule and Interpretation .03 thereunder. 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 principal purpose of the proposed rule change is to increase from fifty contracts to seventy-five contracts

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(3).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

the maximum size of orders for equity options and certain classes of index options that are eligible to be executed through RAES.³ Additionally, the proposed rule change makes certain complementary changes to the Exchange's firm quote rule and Interpretation .03 thereunder.

Currently, the maximum size of RAES-eligible orders is fifty contracts for all classes of options traded on CBOE for which a greater maximum is not expressly provided in the rules.⁴ Options subject to the fifty contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options except options on the S&P 500 Index, options on the Nasdaq 100 Index, options on the Dow Jones Industrial Average ("DJIA"), options on the High Yield Select Ten, and interest rate options.⁵ Increasing the RAES eligibility maximum to seventy-five contracts for these classes of options will not automatically permit orders up to this size to be entered into RAES. Instead, the actual maximum RAES eligibility size is established by the appropriate Floor Procedure Committee ("FPC") of the Exchange, which may maintain the maximum for particular classes at levels below the seventy-five contract maximum that would be allowable under the proposed rule change.

The CBOE represents that increasing automatic execution levels will provide the benefits of automatic execution to a larger number of customer orders. The CBOE also represents that RAES affords prompt and efficient executions at the CBOE displayed price or, in most cases, at the National Best Bid or Offer ("NBBO") if the NBBO is better than the CBOE's displayed bid or offer.

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of RAES orders even as the maximum order size is increased. The Exchange's firm quote rule, Rule 8.51, ensures that non-broker dealer customer orders will be executed at the CBOE's displayed quote or better even if an order is rejected from RAES because a better quote is being disseminated by another market. Rule 8.51(a) states that the firm quote requirement for a particular class of

options shall be no less than the RAES contract limit applicable to that class of options. This ensures that orders that are rejected from RAES will still be executed at the CBOE's displayed quote or better.

In this filing, the CBOE proposes to amend Rule 8.51(a) to state that if the RAES contract limit is established at a level of higher than fifty contracts then the firm quote requirement will be for fifty contracts. The Exchange believes that because, for the most part, the RAES contract limit and the firm quote limit are of comparable levels on the CBOE, a firm representing a customer will not be disadvantaged if it determines to seek the quick and relatively assured execution available on RAES: even if the order is kicked out, it will be entitled to the firm quote guarantee in most instances.⁶

In addition, the Commission has approved a rule filing permitting the implementation of Variable RAES.⁷ Variable RAES allows market makers to specify the maximum size of orders which they are willing to trade at any one time on RAES, subject to a minimum size that may be established by the appropriate FPC. Variable RAES was proposed to ensure that market makers are willing to continue to participate on RAES even as the maximum contract size is increased. The CBOE represents that the appropriate FPC will likely implement Variable RAES in any options class that has a contract limit of seventy-five contracts to ensure that there is adequate market-maker participation in that class.

There is also a rule that requires DPMs to participate in any automated execution system which may be open in appointed option classes (Rule 8.80(c)(5)) and a rule that states that market makers are expected to participate in and support Exchange-sponsored automated programs, including but not limited to RAES (Interpretation .07 to Rule 8.7). The Exchange is in the process of assigning a large percentage of its option classes that were formerly traded in market-maker crowds to DPMs.⁸

⁶ The Commission recently approved a proposal by the Exchange to allow an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book. See Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

⁷ See *supra* note 4.

⁸ The entire equity options floor has been assigned to DPMs. Telephone conversation between Timothy Thompson, Director—Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Commission, on March 9, 2000.

The Exchange also has rules that allow for RAES to be suspended when a fast market has been declared in order to maintain a fair and orderly market.⁹ This rule provides the Exchange with the flexibility to intervene if it determines that there is inadequate market maker participation or capital requirements. In addition, CBOE Rule 8.16(b) requires a market maker who has logged onto RAES at any time during an expiration month to log onto RAES in that option class whenever he is present in the trading crowd until the next expiration. CBOE Rule 8.16(c) states that if there is inadequate participation on RAES then Floor Officials of the appropriate Market Performance Committee may require market makers who are members of the trading crowd to log on to RAES absent reasonable justification or excuse for non-participation. Alternatively, the Floor Officials may allow market makers in other classes of options to log on to RAES in such classes.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting DPMs which is currently set forth in Interpretation .02 to Rule 8.80. The Exchange has proposed to increase the DPM capital requirements in a rule filing pending before the Commission.¹⁰ In addition, the clearing firms for market makers and DPMs perform risk management functions to ensure that the market makers have sufficient financial resources to cover their positions.

In addition to increasing the maximum size for RAES-eligible orders in certain classes of options, the Exchange is proposing to change Interpretation .03 to Rule 8.51, the Exchange's firm quote rule. Interpretation .03 states that "Market-Maker orders and other broker-dealer proprietary order that in each case are for less than the firm quote requirement applicable for that class of options and are represented in the crowd by a Floor Broker or DPM should not be reflected in the displayed market quote." With respect to all option classes other than broad-based index option classes, the Exchange is proposing to change this requirement such that the only orders exempted from being reflected in the market quote are market maker orders represented in the crowd by a Floor Broker or DPM for less than ten contracts. This change will ensure that any broker-dealer order represented in the crowd will be presented in CBOE's

⁹ See CBOE Rule 6.6(b)(vi).

¹⁰ See Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 2369 (May 3, 1999).

³ RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

⁴ See Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999).

⁵ The RAES eligibility maximum is currently 100 contracts for options on the S&P 500 Index, the Nasdaq 100 Index, the DJIA, the High Yield Select Ten, and interest rate options. See *supra* note 4.

quote and may thus become the basis for a quote at which an order may be executed. The Exchange will conduct further review to determine whether to include broad-based index option classes under the proposed change in the future.

The Exchange believes that the increase should provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing. In support of its proposal to increase the RAES eligibility maximum, CBOE represents that its system capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from the implementation of this proposal.

2. Statutory Basis

The proposed rule change will enhance the ability of the Exchange to provide instantaneous, automatic execution of public customers' orders at the best available prices, which furthers the objectives of Section 6(b)(5)¹¹ of the Act 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.

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

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 approved such proposed rule change, or

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

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission seeks comment concerning whether the proposed rule change fosters quote competition among options market professionals and enhances investors' interests in obtaining the best available price.

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-99-51 and should be submitted by July 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42929; File No. SR-CHX-00-18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Fees for the E-Session

June 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on June 1, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to continue, through October 1, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the CHX's after-hours trading session ("E-Session"). The text of the proposed rule change is available upon request from the Commission or the CHX.

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 Exchange 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 Exchange 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 proposed rule change amends the Schedule to eliminate, through October 1, 2000, order processing, transaction and floor broker fees for transactions that occur during the CHX's E-Session.⁴

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. See Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR-CHX-99-16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central

¹¹ 15 U.S.C. 78f(b)(5).