

These internal transactions would be undertaken to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes.

#### *Energy-Related Subsidiaries Outside the United States*

Exelon requests authority to engage through subsidiaries, direct or indirect, in energy-related activities outside the United States like those activities exempted in the United States under rule 58 of the Act. Exelon requests authority to conduct energy management services<sup>3</sup> and consulting services<sup>4</sup> anywhere outside the United States and to conduct energy marketing activities<sup>5</sup> in Canada and Mexico.

<sup>3</sup> Energy management services includes the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning, electrical and power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems.

<sup>4</sup> Consulting services, for energy- and gas-related matters for associate and nonassociate companies as well as for individuals, includes technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or centralized billing, bill disaggregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, general management consulting including training activities, feasibility studies, and other similar related services.

<sup>5</sup> Energy marketing means the brokering and marketing of electricity, natural gas and other energy commodities, as well as providing incidental, related services, such as fuel management, storage and procurement.

#### *Reporting*

Ventures (or Enterprises, as appropriate) proposes to file a single consolidated quarterly report under rule 24 of all investments in subsidiaries, commencing with the quarterly report for the first full calendar quarter which ends at least 45 days following the date of the order for this Application. It is proposed that the combined report be in lieu of any separate notification on Form U-6B-2 that would otherwise be required with respect to exempt securities issuances.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-5547 Filed 3-7-02; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act; Meetings**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 11, 2002.

Closed meetings will be held on  
Tuesday, March 12, 2002 and  
Thursday, March 14, 2002 at 10 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9), 9(ii) and (10), permit consideration of the scheduled matters at closed meetings.

The subject matter of the closed meeting scheduled for Tuesday, March 12, 2002, will be:

Inspection point.

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and  
Formal orders of investigation.

The subject matter of the closed meeting scheduled for Thursday, March 14, 2002, will be:

Inspection point.

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and  
Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 6, 2002.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 02-5809 Filed 3-6-02; 3:53 pm]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-45490; File No. SR-CBOE-2001-70]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Dissemination of Options Quotations With Size**

March 1, 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 28, 2001, 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 January 14, February 27, and March 1, 2002, respectively, the Exchange submitted Amendment Nos. 1,<sup>3</sup> 2,<sup>4</sup> and

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Edward J. Joyce, CBOE, to Deborah Flynn, SEC, dated January 11, 2002 ("Amendment No. 1"). In Amendment No. 1, the exchange submitted additional information clarifying the intended operation of the proposal and eliminated a provision regarding the maximum number of contracts eligible for automatic execution.

<sup>4</sup> See Letter from Steve Youhn, CBOE, to Deborah Flynn, SEC, dated February 13, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange, among other things, withdrew from the filing that section pertaining to the execution of Exchange's Retail Automatic Execution System ("RAES") orders against manual quotes. The Exchange filed a new proposed rule change to address the execution of RAES orders against manual quotes (SR-CBOE-2002-07).

3<sup>5</sup> to the proposal. 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 CBOE Rules 6.8 and 8.51 to accommodate the introduction of an options quotation with size ("quotes with size" or "QWS") system with an automatic decrementation feature ("AutoDec"). Below is the text of the proposed rule change. Additions are italicized and deletions are bracketed.

\* \* \* \* \*

#### **CBOE Rule 6.8: RAES Operations**

(b) Definitions

(i)-(iii) no change

(iv) The term "options quotations with size" refers to any series of options for which the Exchange disseminates a quotation size that is able to be decremented to reflect previous executions.

(c)(v) The appropriate FPC shall determine the size of orders eligible for entry into RAES. *Except for classes in which the Exchange disseminates options quotations with size, the eligible order size may not be for more than one hundred contracts. For classes in which the Exchange disseminates options quotations with size, the eligible order size may be set as the disseminated size.* [Eligible orders must be for one hundred or fewer contracts on series placed on the system.] Further, [T]he appropriate FPC, in its discretion, may determine to restrict the size and kind of eligible orders, including but not limited to, lowering contract limits on particular option issues. Announcements concerning the size and kind of eligible orders will be made promptly as these are adjusted. The appropriate FPC will have discretion to place on the system such series in classes of options subject to its jurisdiction as it determines is appropriate.

#### **Interpretations and Policies**

.09

(a)(1) *If the Exchange disseminates options quotations with size in a particular series, the number of contracts that may receive automatic*

*execution at the disseminated price may not exceed the disseminated size in that series. Automatic executions will decrement the disseminated size by the amount of the automatic execution. When the number of contracts receiving automatic execution at a particular price exhausts the accompanying disseminated size for that series, subsequent orders that are otherwise eligible for RAES will not execute automatically for a period not to exceed 30-seconds ("re-route period") and instead shall be automatically rerouted to PAR, BART or Live Ammo. When an incoming order is within the eligible order size yet is for a greater number of contracts than the disseminated size, that order will receive a partial automatic execution in an amount up to the disseminated size. The balance of the order and any subsequent orders otherwise eligible for RAES that are entered during the reroute period will route automatically to PAR, BART, or Live Ammo.*

(2) *Orders Rerouted from Live Ammo to RAES. In the event any orders previously routed to Live Ammo as described in subparagraph (a)(1) above are rerouted to RAES ("rerouted orders") pursuant to Rule 7.4(g), all rerouted orders will receive automatic execution at the disseminated price even if the cumulative size of these rerouted orders exceeds the disseminated size. In addition, any orders rerouted to RAES pursuant to Rule 7.4(g) will maintain priority over subsequently-received RAES orders.*

(b) *If the Exchange disseminates options quotations with size in a particular class, the entity responsible for determining a formula for generating automatically updated market quotations for that class pursuant to Rule 8.7(b) and (c) shall also have responsibility for determining the size of the undecrementd disseminated quote for that same class. For those classes in which a DPM, LMM, or SMM, or a market-maker in good standing has been appointed the responsibility to determine the size of the disseminated quote, the DPM, LMM, SMM or appointed market-maker may, but is not required to, consult with and/or agree with members of the trading crowd in determining the size of the disseminated quote. The members of the trading crowd are not required to provide input in these decisions, and in all instances, the DPM, LMM, SMM, or appointed market-maker has the responsibility to make the final determination as to the size of the undecrementd disseminated quote. For those classes in which a DPM, LMM, SMM, or appointed market-maker does not have the responsibility*

*set forth in Rule 8.7(b), the trading crowd shall determine the size of the undecrementd disseminated quote.*

### **Rule 8.51. Firm Disseminated Market Quotes**

(a)-(b) no change

(c) Firm Quote Size.

(1) no change

(2) The firm quote requirement size for non-broker-dealer orders shall be the size that the Exchange [periodically publishes along with the quotes] disseminates[d] to vendors. In the event the Exchange has not [published] disseminated a size along with its quotes for a particular series, then the firm quote requirement size for non-broker-dealer orders shall be that size published by the Exchange in a different manner (e.g., on its website). The Exchange will also separately publish the firm quote requirement size for broker-dealer orders. In the case of broker-dealer orders, if the size for a particular series disseminated along with the quotes is less than the size published for the broker-dealer orders, then the firm quote requirement for broker-dealer orders shall be the size published along with the quotes.

(a) When the disseminated quote represents a customer limit order in EBook, the firm quote requirement for non-broker-dealer orders shall be the greater of the size of the customer limit order or a size predetermined by the appropriate FPC. When the disseminated quote represents both a customer limit order in EBook and the trading crowd's quote, the firm quote requirement for non-broker-dealer orders shall be the aggregate size of the customer limit order and the size that the Exchange periodically publishes or disseminates for that particular series.

(b) For those series in which the Exchange disseminates options quotations with size (as defined in Rule 6.8(b)(iv)), it may authorize the use of a replenishment timer. The replenishment timer, which shall be configurable by class by the DPM, is a feature that automatically increases the size of the disseminated quote for a particular series to the original Autoquote (Exchange or proprietary) size parameter after a pre-established time-period during which no automatic executions at the disseminated quote have occurred.

\* \* \* \* \*

### **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

<sup>5</sup> See Letter from Steve Youhn, CBOE, to Deborah Flynn, SEC, dated February 28, 2002 ("Amendment No. 3"). In Amendment No. 3, the Exchange amended the proposed rule text of Proposed CBOE Rule 6.8.09(a)(1) to clarify the proposed operation of the 30-second re-route period. In addition, Amendment No. 3 eliminates references to "real" and "actual size" in the purpose section of the proposal.

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

*Introduction*

Exchange Rule 8.51, Firm Disseminated Market Quotes, codifies CBOE's firm quote obligations. Section (c) of that rule, Firm Quote Size, provides that:

The firm quote requirement size for non-broker-dealer orders shall be the size that the Exchange periodically publishes along with the quotes disseminated to vendors. In the event the Exchange has not published a size along with its quotes for a particular series, then the firm quote requirement size for non-broker-dealer orders shall be that size published by the Exchange in a different manner (e.g., on its website).

Currently, the Exchange's quotation systems are unable to decrement the disseminated size to reflect previous executions, except in the case of orders in the book. For this reason, the Exchange has complied with the Commission's Quote Rule<sup>6</sup> by publishing on its website the firm quote size for each series and along with the bid-ask quotes disseminated to quotation vendors.

Even though the Exchange is "firm" for the size published on its website, this size often is not representative of the depth of liquidity a trading crowd is willing to provide in a particular series. Most trading crowds are willing to provide deeper markets, however, the systems limitations described above make such an endeavor impractical. The publication of a static size figure, which also can cause artificial liquidity, puts the Exchange at a competitive disadvantage in competing for orders of a size greater than the Exchange's published size.

To address this limitation, the Exchange proposes to implement an options quotation with size system. When operational, the QWS system would have an AutoDec feature that enables the Exchange to disseminate "dynamic" size, i.e., a size that reflects previous executions and a size for which the Exchange is firm pursuant to

Exchange Rule 8.51. The ability to decrement size would enable the Exchange to disseminate a real size that is a much more accurate barometer of the liquidity available in a particular series. The Exchange believes that this systems improvement would significantly benefit investors in their order routing decisions by providing them with a better indication of the depth of liquidity available in a series. Accordingly, the Exchange believes that the adoption of a QWS system would enable it to compete more effectively for larger-sized orders. Finally, as discussed in greater detail below, the Exchange notes that this proposal is substantially similar to how the International Securities Exchange's ("ISE") quote size provisions operate.

*Description*

For those series in which the exchange disseminates options quotations with size, the QWS system would automatically decrement all executions for each individual series calculated by Autoquote<sup>7</sup> that execute automatically. For example, if the Exchange disseminates a size of 100 contracts, the trading crowd would be firm for 100 non-broker-dealer contracts executed automatically or via open outcry at the disseminated price, until that size was exhausted or until the quote was refreshed. The Exchange notes that in order to preserve the use of RAES as an automatic execution system for smaller retail orders, the appropriate Floor Procedure Committee ("FPC") would retain its authority to establish the RAES size for a particular series at a number less than the disseminated size.<sup>8</sup> For classes in which the Exchange does not disseminate options quotations with size, current CBOE Rule 6.8(c)(v) remains in effect, as discussed in the section "RAES Operations."<sup>9</sup>

While the disseminated size would reflect the number of contracts that may be executed automatically or via open outcry at a particular price, trades

executed in open outcry would not cause the disseminated size to decrement automatically. In this respect, the Exchange notes that in some instances it would be firm for executions that in the aggregate sum up to more than its disseminated size. The number of contracts in a particular series that may receive automatic execution at the disseminated price, however, may not exceed the disseminated size.<sup>10</sup> Consistent with the current provisions of CBOE Rule 6.8, orders eligible for electronic execution would not be executed automatically at prices inferior to the national best bid or offer as identified by CBOE.

There are several reasons why trades executed in open outcry would not decrement displayed size. First, decrementation from the floor requires manual input, which can be time consuming and resource intensive, especially in very active markets. In contrast, RAES would be programmed to automatically decrement size upon executions. Second, the need for decrementation to prevent unnecessary liquidity exposure is more urgent in an auto-ex situation. When an order hits RAES, there is virtually no time to adjust quotes before another order can arrive through RAES. In contrast, all market makers and the Designated Primary Market Maker ("DPM") are immediately aware of an open outcry execution and are thus able to adjust their quotes accordingly. Even if a new order arrives on the floor immediately after an execution, market makers have the ability to adjust their quotes because a new market is created by the previous execution.<sup>11</sup> Finally, the lack of decrementation after an open outcry execution works to the advantage of public customers. The lack of decrementation means that the displayed size remains higher than it would have been if the open outcry trade resulted in decrementation. Thus, public customers would have a larger firm quote size to execute against.

If an incoming electronic order exceeds the disseminated size, that order would receive a partial automatic execution for up to the disseminated size at the disseminated price. The balance of the order would be automatically rerouted to the Exchange's Public Automated Routing System ("PAR"), the Exchange's Booth Automated Routing Terminal ("BART"),

<sup>7</sup> For purposes of this rule filing, Autoquote shall refer to any automated quotation updating system, whether Exchange-owned or proprietary.

<sup>8</sup> The Exchange originally proposed to allow the appropriate FPC to retain its current authority to limit the number of contracts eligible for automatic execution to a number less than the disseminated size. In Amendment No. 1, the Exchange proposed to remove this discretion and clarified that the RAES size would equal the disseminated size. In Amendment No. 2, the Exchange once again proposed to allow the appropriate FPC to retain its authority to limit the RAES size to a number less than the disseminated size.

<sup>9</sup> CBOE Rule 6.8(c)(v) provides that the appropriate FPC shall determine the size of orders eligible for entry into RAES. The eligible order size for non-QWS series must be 100 contracts or less.

<sup>10</sup> See Proposed CBOE Rule 6.8.09(a).

<sup>11</sup> In such a situation, the new quote would be input into CBOE quotation systems for dissemination to the public.

<sup>6</sup> 17 CFR 240.11Ac1-1.

or Live Ammo<sup>12</sup> and thus may receive a dual-price execution.<sup>13</sup> This treatment is consistent with Exchange Rule 8.51(d), the Thirty Seconds Rule, which requires the crowd within 30 seconds of receiving an order for a size greater than the quotation size to execute the entire order or to execute that portion of the order equal to the disseminated size and revise its price quote. The Exchange notes that at some future point it may develop the systems capability to automatically execute these orders at dual prices.

#### *The 30-Second Reroute Period*

When the disseminated size is decremented to zero by automatic executions, for a period not to exceed 30-seconds ("reroute period"), all subsequent orders in that series that are otherwise eligible for automatic execution would be automatically rerouted either to PAR, BART or Live Ammo.<sup>14</sup> Upon expiration of the reroute period timer, new electronic orders would again be eligible for automatic execution up to the refreshed disseminated size.<sup>15</sup> See Proposed CBOE Rule 6.8.09(a)(1). The duration of the reroute period would be configurable by the DPM on a class basis and may not exceed 30-seconds. The DPM may manually override the reroute timer by submitting a new quote prior to the expiration of the reroute period. For example, if the reroute period timer is established at 15-seconds, the DPM may manually send a new quote at any time prior to 15-seconds. When this is done, orders may once again be eligible for automatic execution at the refreshed price.<sup>16</sup>

The CBOE represents that the purpose of the reroute period is to provide the DPM with the opportunity to refresh the quote when the disseminated size has been exhausted, in conformity with the Quote Rule. Amendment No. 1 clarifies that orders received during the reroute period would not be held for the duration of the reroute period. Rather, as incoming electronic orders are received during the reroute period they

would be routed upon receipt to PAR, BART or Live Ammo. Upon expiration of the reroute period, subsequent incoming orders that are eligible for automatic execution would once again be eligible to receive automatic execution at the refreshed price.<sup>17</sup>

The Exchange believes that DPMs would have strong incentives to establish reroute periods that last considerably less than thirty seconds for several reasons. First and foremost is for competitive reasons. During the reroute period, the Exchange would disseminate a size of "1." Customers and firms that see the Exchange is firm for only one contract in this particular series may look elsewhere to send their options orders. This provides a strong incentive to DPMs to update their quotations as quickly as possible. Second, the Exchange notes that the appropriate FPC could require DPMs to establish the length of the reroute period to a maximum length of time that is less than thirty seconds. For example, the FPC could require that DPMs establish a reroute period that does not exceed fifteen seconds. In this instance, DPMs would have the ability to establish a reroute period that is less than fifteen seconds.<sup>18</sup>

The Exchange notes that the use of Live Ammo as a routing destination provides two main benefits. First, it provides an alternative to routing to PAR. In some instances, several orders may route to PAR terminals at approximately the same time. If traffic on PAR is heavy, the DPM would have the ability to route orders to Live Ammo. The CBOE believes that this should help to ensure that orders are addressed expeditiously. Second, the Live Ammo terminals feature a "Live Ammo to RAES" switch that enables the DPM to automatically reroute orders back for automatic execution. If the DPM uses this function, all orders on Live Ammo would then immediately reroute for automatic execution, even if the cumulative size of these orders exceeds the disseminated size.<sup>19</sup>

Amendment No. 2 would detail in the proposed rule text that function of Live Ammo that allows a DPM to automatically reroute orders from Live Ammo to RAES for automatic execution, even if the cumulative size of these rerouted orders exceeds the disseminated size. In addition, CBOE has amended the rule text to provide

that orders rerouted from Live Ammo to RAES would retain priority over subsequently received RAES orders. CBOE notes that this latter point was addressed by the Exchange in its Amendment No. 3 to SR-CBOE-98-27, which the Commission approved on February 2, 2000.<sup>20</sup> Finally, for a more detailed description of Live Ammo in general, and the function known as "Live Ammo to RAES" in particular, the Exchange identifies CBOE Rule 7.4(g) and the aforementioned rule filing SR-CBOE-98-27 and the amendments thereto.<sup>21</sup>

#### *RAES Operation*

As indicated above, the QWS system would enable the Exchange to display larger disseminated sizes, which benefits all customers. To facilitate the introduction of QWS, the Exchange would make a corresponding change to CBOE Rule 6.8(c)(v) regarding the maximum eligible order size for RAES orders. Currently, the maximum allowable RAES size is 100 contracts. The Exchange proposes to retain this upper limit, however, it would only apply to those series in which the Exchange does not disseminate options quotations with size (as defined in Proposed CBOE Rule 6.8(b)(iv)). For those series in which the Exchange disseminates options quotations with size, the eligible order size would be established by the appropriate FPC. To limit the maximum eligible order size to 100 contracts would destroy the purpose for which the QWS was developed: To have the ability to provide large quotation sizes against which electronic orders may automatically execute.

#### *Determination of Disseminated Size*

The entity that has responsibility under Exchange Rules to determine a formula for generating automatically updated market quotations would also be responsible for determining the size of the undecremented disseminated quote. In most instances, this entity would either be the DPM, Lead Market-Maker ("LMM"), or Supplemental Market-Maker ("SMM") or Appointed Market-Maker ("Appointed Market-Maker") for the class.<sup>22</sup> While DPMs,

<sup>12</sup> The Live Ammo electronic screen displays market orders or limit orders that improve the market. See CBOE Rule 7.4(g).

<sup>13</sup> The Exchange notes that orders would only be routed to BART if a firm so chooses.

<sup>14</sup> The appropriate FPC shall determine by class the location to which to route those RAES orders that are submitted during the reroute period. The Exchange notes that orders would only be routed to BART if a firm so chooses. Absent specific instructions, orders would reroute to either PAR or Live Ammo.

<sup>15</sup> During the reroute period, the Exchange would disseminate a size of "1" (with the same price) until the quote has been refreshed by the DPM.

<sup>16</sup> See Amendment No. 1, *supra* note, at p. 2.

<sup>17</sup> See Amendment No. 1, *supra* note, at pp. 1-2 and Amendment No. 2, *supra* note, at p. 1.

<sup>18</sup> *Id.* The Exchange notes that the DPM has the responsibility for establishing the duration of the reroute period for his classes. The appropriate FPC may however establish a ceiling on that duration.

<sup>19</sup> *Id.* at p. 2.

<sup>20</sup> See Securities Exchange Act Release No. 42379, 65 FR 6665 (February 10, 2000).

<sup>21</sup> See Amendment No. 2, *supra* note.

<sup>22</sup> For those classes in which a DPM, LMM, SMM, or Appointed Market-Maker does not have responsibility to determine a formula for generating automatically updated market quotations, the obligation to update quotes is imposed upon the trading crowd as a whole. See File No. SR-CBOE-2001-64, a proposal pending before the

LMMs, SMMs, and Appointed Market-Makers have the responsibility to determine the size of the undecrementated disseminated quote, the proposed amendment to Interpretation and Policy .09(c) of CBOE Rule 6.8 expressly provides that the DPM, LMM, SMM, or Appointed Market-Maker may, but is not required to, consult with and/or agree with other market-makers in the trading crowd in determining the size of the undecrementated disseminated quote.<sup>23</sup> Conversely, the amendment provides that to the extent a DPM, LMM, SMM, or Appointed Market-Maker determines to consult with and/or agree with the market-makers in the trading crowd in determining the size of the undecrementated disseminated quote, members of the trading crowd are not required to provide input to the DPM, LMM, SMM, or Appointed Market-Maker about these decisions. The Exchange believes that this type of consultation between trading crowd participants is entirely appropriate because the trading crowd is defined as the "responsible broker or dealer" for purposes of CBOE Rule 8.51. Because they collectively must honor the disseminated firm quote size, it is appropriate for them to discuss collectively the size of that guarantee.

#### *The Replenishment Timer*

Because of the preponderance of series for which each DPM is responsible for maintaining quotes, the Exchange intends to introduce a "replenishment timer" to guard against the continued dissemination of "stale" size values. The replenishment time, which is configurable by class by the DPM, is a feature that automatically increases the disseminated size for a particular series back to the original Autoquote volume parameter after a set time-period when no further decrementation has occurred.<sup>24</sup> The Replenishment Timer is incorporated in proposed CBOE Rule 8.51(c)(2)(b).<sup>25</sup>

Commission, for a description of the Autoquote-setting mechanism.

<sup>23</sup> In those classes in which a DPM, LMM, SMM, or Appointed Market-Maker does not have responsibility to determine the Autoquote variables, the trading crowd as a whole shall determine the size of the undecrementated disseminated quote.

<sup>24</sup> For example, assume the replenishment timer is set for 240-seconds in a class with a disseminated size of 200 and that this particular series has been decremented to 40 contracts due to executions. In order to prevent the continued dissemination of 40-contracts for an extended period, the replenishment timer would, after 240-seconds from the last execution, increase the disseminated size back to 200 contracts. The firm quote size would then be 200 contracts.

<sup>25</sup> See Amendment No. 1, *supra* note, at p. 3.

#### *Customer Benefits*

For many reasons, CBOE believes that the proposed QWS system would act to increase liquidity and depth in its market and enhance its competitiveness with other options exchanges. QWS would reflect better the true state of liquidity being offered at the time by the crowd. It would enable market makers and DPMs to quote a larger size market because they would not be subject to repetitive executions at an aggregate size greater than the size of their firm quote. Currently, if a crowd is firm for 50 contracts, repetitive RAES executions can result in aggregate executions that total far greater than 50 contracts before the DPM has an opportunity to update quotations. This artificial liquidity exposure limits market makers and DPM willingness to establish a large firm quote size for customers. QWS should encourage DPMs and market makers to offer greater size guarantees and tighter markets because their liquidity exposure would be limited to the total size displayed. In addition, CBOE would be able to compete better against markets that display quotes with size, such as the ISE. Additionally, the QWS would act in a neutral manner to all order entry firms. The size displayed would be available for all firms. While a market participant may be able to avail itself of a displayed size and absorb all of the size before another market participant, every CBOE member has an equal opportunity to attempt to avail itself of a displayed size before it is decremented.

Upon approval of this rule filing, the Exchange would gradually rollout the QWS functionality by series. It is the Exchange's hope that QWS would be active in its most active series. For those series in which the Exchange does not disseminate options quotations with size, the Exchange would continue to comply with the Commission's Quote Rule as it currently does (i.e., published by the Exchange on its website, see CBOE Rule 8.51(c)(2). For those series in which the Exchange does not disseminate options quotations with size, RAES would continue to operate as it does today (i.e., with a 100-contract limit, which the appropriate FPC can determine to lower for particular issues). CBOE Rule 6.8(v), as amended, clearly makes this distinction.<sup>26</sup>

#### *Similarity to ISE and Nasdaq*

Finally, the Exchange notes that this proposal is substantially similar to how the ISE quote size provisions operate. ISE grants automatic executions up to

its disseminated size. Accordingly, if ISE disseminates 100 contracts in a particular series, any customer can receive an electronic execution for up to 100 contracts. CBOE's QWS system would operate in an identical manner. Therefore, if CBOE and ISE each disseminate a size of 100 contracts in the same series, customers eligible to submit orders through CBOE Rule 6.8 may be entitled to receive an automatic execution for up to 100 contracts through CBOE's QWS system just as they could receive an automatic execution for 100 contracts through ISE.

Similarly, the NASD adopted a rule that allowed market makers to quote their actual size and reduced the minimum quotation size to one unit of trading.<sup>27</sup> The move to actual size, combined with the decrementation of a Nasdaq market maker's quote size after an automatic execution, enabled market makers "more flexibility to manage risk" and allowed them to reflect size in their quotations based on business and market factors instead of regulatory imposed minimums. The Exchange believes that its QWS proposal accomplishes a similar result. However, with QWS, CBOE would still guarantee a minimum level of liquidity upon the establishment of every new quote, but that minimum should reflect more accurately the amount of liquidity offered at the price.

#### *2. Statutory Basis*

This proposal would enable the Exchange to disseminate quote sizes that more accurately reflect the number of contracts for which the DPM and crowd stand ready to buy or sell at the disseminated size. The dissemination of quotes with size with AutoDec should aid investors in their routing decisions by providing them with more certainty regarding the depth of liquidity behind a price quote. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>28</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>29</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

<sup>27</sup> Securities Exchange Act Release No. 40211 (July 15, 1998), 63 FR 39322 (July 22, 1998).

<sup>28</sup> 15 U.S.C. 78(f)(b).

<sup>29</sup> 15 U.S.C. 78(f)(b)(5).

<sup>26</sup> See Amendment No. 2, *supra* note, at pp. 1–2.

acts and, in general, 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 would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that disseminating options quotations with size would enhance competition. The proposed change does provide for limited joint participation among competing CBOE market-makers in a trading crowd in certain circumstances (*e.g.*, to determine the size of the disseminated quote). The Exchange believes this limited joint participation is procompetitive, because it is necessary to provide for a fair and orderly market in the thousands of option series traded on the Exchange. Accordingly, 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 by assuring fair competition among markets. The proposed rule also is consistent with and furthers the objectives of section 6(b)(5) of the Act in that it is designed to remove impediments to a free and open market, and to protect 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 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, 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 filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-70 and should be submitted by March 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-5549 Filed 3-7-02; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45493; File No. SR-NASD-2002-27]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and by the National Association of Securities Dealers, Inc. Amending NASD Rule 3070 Concerning the Reporting of Criminal Offenses by Members and Persons Associated With a Member to the NASD**

March 1, 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 February 21, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. 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**

NASD Regulation proposes to amend NASD Conduct Rule 3070 to limit reporting under this category to any felony, certain types of misdemeanors, and substantially equivalent activity in a domestic or foreign court. According to NASD Regulation, this proposed rule change would conform NASD Rule 3070(a)(5) to a proposed rule change by the New York Stock Exchange ("NYSE") to amend NYSE Rule 351(a)(5).<sup>3</sup>

The text of the proposed rule change appears below. New text is in *italics*; deletions are in *brackets*.

#### **Rule 3070. Reporting Requirements**

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) through (4) No change.  
(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, [any criminal offense (other than traffic violations)] *any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity in a domestic or foreign court.*

(6) through (10) No change.

(b) through (e) No change.<sup>4</sup>

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation has prepared summaries, set forth in sections A, B,

<sup>3</sup> See Securities Exchange Act Release No. 45404 (February 6, 2002), 67 FR 6565 (February 12, 2002).

<sup>4</sup> The initial text of the proposed rule change stated "(a) through (e) No Change." In fact, NASD Regulation intended to state "(b) through (e) No Change." The Commission made this correction to the proposed rule text with the agreement of NASD Regulation. Telephone conversation between Shirley H. Weiss, Associate General Counsel, NASD Regulation, and Christopher Solgan, Law Clerk, Division, Commission, on February 28, 2002.

<sup>30</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.