

potential for manipulation of the index or its overlying options (such as NDX and MNX). Furthermore, the Commission previously has stated its belief that CBOE's surveillance programs are "adequate to detect and deter violations of position and exercise limits, as well as to detect and deter attempted manipulation and other trading abuses through the use of * * * illegal positions by market participants."¹¹

The Commission also finds that elimination of the front-month limitation for NDA options is consistent with the Act.¹² As the Exchange has noted, a front-month limitation was established for American-style broad-based index options as a measure to lessen market volatility experienced at the close of trading on expiration when stock/index programs were unwound. CBOE has argued that this rationale is not relevant for the NDX option, which is a European-style contract with a settlement value based on a volume weighting of opening stock prices as reported within the first five minutes of trading.¹³ Eliminating the front-month position and exercise limits for NDX options may bring additional depth and liquidity, in terms of both volume and open interest, to the NDX without significantly increasing concerns regarding inter-market manipulation or disruption of the index options or the underlying component securities.

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of public notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.¹⁴ The original filing has been published in the **Federal Register**, and no comments were received. The only material changes to the rule text provided in Amendment No. 1 are increases in the position and hedge exemption limits for MNX options that will make these limits ten times the equivalent limits for NDX options. Currently, CBOE Rule 24.4(d) states that MNX options must be aggregated with NDX options at a ratio of ten-to-one to determine compliance with the position limits. Approving Amendment No. 1 on an accelerated basis will give force to

the intent of the existing rule and help eliminate confusion in the application of position limits for NDX and MNX options.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-CBOE-00-14) is approved and that Amendment No. 1 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44152; File No. SR-CBOE-00-13]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Procedures and Requirements for Trading in Joint Accounts in Equity and Index Options

April 5, 2001.

I. Introduction

On April 3, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 change to amend the procedures and requirements for trading in joint accounts in equity and index options. On January 8, 2001, the CBOE filed Amendment No. 1 with the Commission.³ The proposed rule

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated October 23, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1, which: (1) represents that staff at the American Stock Exchange LLC, International Securities Exchange LLC, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. have informed the CBOE that their respective regulatory policies do not include any specific rule or regulatory circular that prohibits trading between joint accounts with common participants or that addresses "wash sale" transactions (*i.e.*, a transaction in a registered security that involves no change in beneficial ownership, for the purpose of creating a false or misleading appearance of active trading); (2)

change was published for comment in the **Federal Register** on February 27, 2001.⁴ No comments were received on the proposal.⁵ This order approves the proposed rule change, as amended.

II. Description of the Proposal

The CBOE proposes to amend Interpretation .06 to Exchange Rule 8.9 and Exchange Regulatory Circulars RG 98-94 and RG 98-95, which set forth Exchange procedures and requirements for trading in joint accounts in equity and index options, to allow certain transactions between joint accounts that have common participants.

In early 1980s, the CBOE adopted a regulatory interpretation that prohibited trading between related accounts with greater than 10% common ownership. The Exchange later amended Interpretation .06 to Exchange Rule 8.9 (Securities Accounts and Orders of Market-Makers) to extend this trading prohibition to market maker joint accounts that have common participants.⁶ Interpretation .06 to Exchange Rule 8.9 and Exchange Regulatory Circulars⁷ state that "no joint account participant shall cause a transaction to be executed for the joint account with another member acting on behalf of another joint account if the member knows, or in the exercise of reasonable care under the circumstances, the member has reason to know that the two joint accounts have one or more common participants."⁸

represents that the proposed rule change makes the CBOE's rules and regulatory policies regarding transactions between related accounts or entities consistent with those in place at the other options exchanges; and (3) provides three letters that were submitted by CBOE members to the Exchange in support of the rule filing.

⁴ Securities Exchange Act Release No. 43984 (February 20, 2001), 66 FR 12574 (February 27, 2001).

⁵ Although the Commission received no comments on the proposal, three letters were sent to the CBOE and forwarded to the Commission. See letters from Patricia Levy, General Counsel, and Steven O'Malley, Compliance & Regulatory Officer, Hull Trading Company, LLC, to Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, dated August 13, 1999; Michael J. Carusillo, Chief Executive Officer, and Barbara McHugh, President, Fulcrum Investment Group, LLC, to Pat Cerny, CBOE, dated July 17, 1998; and William J. Shimanek, Kessler, Asher Clearing, to Pat Cerny, CBOE, dated April 24, 1996. See also Amendment No. 1, *supra* note 3.

⁶ See Securities Exchange Act Release No. 38286 (February 13, 1997), 62 FR 8287 (February 24, 1997) (SR-CBOE-96-70).

⁷ The Regulatory Circular governing joint account trading in certain index options was approved in Securities Exchange Act Release No. 31174 (September 10, 1992), 57 FR 42789 (September 16, 1992). The Regulatory Circular governing joint account trading in equity options was approved in Securities Exchange Act Release No. 36977 (March 15, 1996), 61 FR 11911 (March 22, 1996).

⁸ CBOE Rule 8.9, Interpretation .06.

¹¹ Securities Exchange Act Release No. 43052 (July 18, 2000), 65 FR 45805, 45808 (July 25, 2000) (approving increase in position and exercise limits for narrow-based index options on CBOE).

¹² Currently, the Exchange does not impose near-term limits on MNX options.

¹³ Moreover, CBOE has stated that its surveillance procedures during the week of expiration of NDX options include communication with NASD Regulation to determine whether there are any concerns regarding potential manipulation in the securities which comprise the NDX.

¹⁴ 15 U.S.C. 78s(b)(2).

The Exchange now proposes to alter its long-standing regulatory interpretation so that certain transactions effected between joint accounts with common participants would be permitted, provided that such transactions are effected within Exchange rules. The proposal would enable common participants to trade between related joint accounts that are used as financing vehicles without violating Exchange Rule 8.9. The following activity would be permitted: (1) Trading between different market makers or other broker/dealer accounts that are financed by the same member where there is no common control over the trading activity in those accounts; and (2) trading between independently operated subsidiaries (*i.e.*, separate broker/dealers) of the same parent or holding company.⁹

The Exchange, however, would continue to prohibit the following activity: (1) Market makers trading with their joint account, even though their percentage of ownership is less than 100% (for instance, market maker ABC finances market maker XYZ via a joint account and ABC is a participant in the joint account. Ownership is 50% and XYZ makes his own trading decisions. ABC is still prohibited from trading directly with the joint account of which he is a member); (2) nominees of the same entity trading with each other on behalf of the entity; (3) firm traders employed by the same broker/dealer on different trading desks trading together, regardless of whether they are separate profit centers; and (4) spouses trading together.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ Specifically, the Commission believes that the proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

general, to protect investors and the public interest. The Commission notes that the proposal responds to concerns of CBOE's membership that its current interpretation of a wash sale does not promote a level playing field for its members *vis-à-vis* other exchanges' members. The Commission also notes that while the proposal would permit certain transactions between joint accounts with common participants, such transactions would be required to be effected within Commission and Exchange rules. Under the proposal, transactions between related joint accounts that are conducted for an improper purpose, such as trades executed to create a false and misleading appearance of activity, would continue to violate Exchange Rule 4.1 (Just and Equitable Principles of Trade). The Commission expects that the CBOE's Department of Market Regulation will continue to monitor vigorously trading between accounts with common beneficial ownership for trading abuses.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-00-13) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-9168 Filed 4-12-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44164; File No. SR-CHX-2001-07]

Self-Regulatory Organizations: Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Precedence of Customer Limit Orders on the Book

April 6, 2001.

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 April 6, 2001, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed

rule changes as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission is granting accelerated approval of the proposed rule change for a pilot period until July 9, 2001.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XXX, Rule 2 (Precedence to Orders in Book), which prohibits specialists from trading ahead of customer orders, by adding Interpretation and Policy .06 to the rule. The new interpretation will require a CHX specialist (including market makers who hold customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. This proposal is filed in conjunction with the Exchange's request for exemptive relief pursuant to Rules 11Ac1-1(e),³ 11Ac1-2(g)⁴ and 11Ac1-4(d)⁵ under the Act, to allow for trading in Nasdaq/National Market ("Nasdaq/NM") securities in subpenny increments and to permit subpenny quotes to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination.⁶ The Exchange is requesting approval of the proposed rule change on a pilot basis, through July 9, 2001. The text of the proposed rule change is set forth below. New text is italicized.

Article XXX, Rule 2

(Precedence to Orders in Book)

Rule 2. No change.
Interpretations and Policies:
.01-.05 No change.

.06 *Trading in Nasdaq/NM Securities in Subpenny Increments*

A specialist (including a market maker who holds customer limit orders) shall be deemed to have violated Article XXX, Rule 2 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the specialist, for his own account, trades with an incoming market or marketable limit order at a

³ 17 CFR 240.11Ac1-1(e).

⁴ 17 CFR 240.11Ac1-2(g).

⁵ 17 CFR 240.11Ac1-4(d).

⁶ See letter from Paul B. O'Kelly, CHX, to Robert Colby, Division of Market Regulation, dated April 6, 2001 ("Exemptive Request").

⁹ The Exchange represented that it will issue a regulatory circular informing members of permitted and prohibited trading activity among joint accounts.

¹⁰ In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.