

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 CBOE. All submissions should refer to File No. SR-CBOE-00-53 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43638; File No. SR-CBOE-00-57]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Prohibition Against Electronically Generated and Communicated Orders

November 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ ("Act") and Rule 19b-4 thereunder,² notice is hereby given that on November 13, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend CBOE Rule 6.8A, which governs the entry of electronically generated and communicated orders. Pursuant to the proposed amendment, an order would be deemed electronically generated and communicated for purposes of the Rule even if a practice requiring minimal human intervention has been added to the process of electronically generating and communicating the order.

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

On September 12, 2000, the Commission approved a proposed rule change filed by the Exchange that prohibits the entry of certain options orders that are created and communicated electronically, without manual input, into the CBOE's Order Routing System ("ORS").³ Specifically, the new Rule (CBOE Rule 6.8A) provides that members may not enter nor permit the entry of, orders into ORS if those orders are created and communicated electronically without manual input and if such orders are eligible for execution on Retail Automatic Execution System ("RAES") at the time they are sent.⁴ To be

³ See Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (SR-CBOE-00-01). The Exchange's rule is similar to a rule of the International Securities Exchange ("ISE") that the Commission approved earlier. When the Commission approved ISE's application for Exchange registration, it also approved several ISE rules, including ISE Rule 717(f) regarding the entry of computer-generated orders. See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000).

⁴ CBOE Rule 6.8A clarifies that an order is eligible for execution on RAES if: (1) Its size is equal to or

permitted under the Rule, order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent.

In its Order approving CBOE Rule 6.8A,⁵ the Commission noted that allowing the entry of electronically generated and communicated orders could undercut CBOE's business model.⁶ As CBOE Rule 6.8A is currently drafted, however, it is the Exchange's view that the Rule is capable of being easily undermined. Professional traders that have developed or purchased software to electronically generate and communicate orders can easily install a simple manual step into the process in order to avoid a violation of the Rule. In fact, the Exchange has learned that professional traders have had persons enter a keystroke to electronically generate and communicate orders to an exchange's order routing system in order to circumvent the prohibition against such orders that have been adopted by other exchanges.

The one comment letter submitted to the Commission on the Exchange's proposed rule change adopting the CBOE Rule 6.8A made this same point.⁷ The commenter noted, "[t]he CBOE should be free to interpret its prohibition against electronically generated and submitted orders to include orders with nominal or minimal human intervention. Otherwise, CBOE's proposal could be completely undermined."⁸

The Exchange believes that its proposed new interpretation to Rule 6.8A is an appropriate response to the potential harm that could result to its business model from those persons who can easily avoid violations of the Rule as it currently stands. The Exchange does not believe it is enough to simply prohibit orders that are sent by the entry of a single keystroke because those

less than the maximum RAES order size for the particular option series; (2) the order is marketable or is tradable pursuant to the RAES auto step-up feature at the time it is sent; and (3) the order has either no contingency or has a contingency that is accepted for execution by RAES.

⁵ See note 3, *supra*.

⁶ Specifically, the Commission noted: " * * * the Commission recognizes that the CBOE's business model depends on market makers for competition and liquidity. Allowing electronic order entry into ORS could give automated customers a significant advantage over market makers. This could undercut CBOE's business model." *Id.* at 56973.

⁷ Letter from Joel Greenberg, Managing Director, Susquehanna Investment Group, to Jonathan G. Katz, Secretary, Commission, dated August 29, 2000.

⁸ *Id.* at p. 3.

professional traders who determine to send electronically generated orders would, thus, be able to avoid violations by inputting two keystrokes or by inputting one touch of a computer screen. Consequently, the proposed interpretation provides some leeway for the Exchange to determine what constitutes minimal human intervention.

The Exchange will be willing to provide interpretive guidance to its members in order to help them determine what type of action will be deemed to be minimal human intervention and what type of activity will not be considered minimal human intervention. The Exchange will also be willing to provide advice to its members about whether a particular surveillance mechanism to detect violations of this Rule by its customers is adequate.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁹ in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. 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 that is not necessary or appropriate in furtherance of the Act.

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 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File Number SR-CBOE-00-57 and should be submitted by January 2, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43654; File No. SR-NASD-00-70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Effective Date of Phase Three for Order Audit Trail System Rules

December 1, 2000.

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 November 30, 2000, 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 ("SEC" or "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 Rule 6957 to extend the effective date of the implementation of Phase Three of the Order Audit Trail System ("OATS") rules until 120 days after the SEC approves File No. SR-NASD-00-23,³ which also proposes changes to the OATS rules. The text of the proposed rule change is available at the Office of the Secretary, NASD Regulation and 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, 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, 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

On March 6, 1998, the SEC approved NASD OATS Rules 6950 through 6957.⁴ OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.⁵ Pursuant to the SEC Order, OATS is required, at

³ See Exchange Act Release No. 43344 (September 26, 2000), 65 FR 59038 (October 3, 2000).

⁴ See Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998) (order approving File No. SR-NASD-97-56).

⁵ See In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order").

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78f(b)(5).