SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41700; File No. SR–BSE–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Minor Rule Violation Plan

August 3, 1999.

I. Introduction

On March 26, 1999, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 Summary Fine Schedule of the Minor Rule Violation Plan through the addition of violations of Rule 11Ac1–4 under the Act (''Display Rule'').[3] Notice of the proposed rule change appeared in the **Federal Register** on May 20, 1999.[4] The Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend its Minor Rule Violation Plan (''Plan'') to include violations of the Display Rule which are inadvertent or unintentional. The amendment will allow the assessment of fines, rather than a full disciplinary procedure in such situations.

The proposal provides that failure to display a customer limit order immediately (no later than 30 seconds) after receipt will result in a written warning for the initial offense. A second offense will result in a $50 fine. Subsequent offenses will be fined at $100. The proposal allows for calculation of subsequent violations on the basis of a rolling 12 month period. Where violations of the Display Rule are found to be intentional, however, the Exchange is not precluded under the proposal from initiating formal Disciplinary Proceedings under Chapter XXX or imposing sanctions of more or less than the recommended fines (not to exceed $2,500 in any event).

III. Discussion

The Commission has reviewed carefully the Exchange's proposal, and finds, for the reasons set forth below, that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5), 6(b)(6), 11A(a)(1)(C)(iii) and (iv) of the Act and Rule 11Ac1–4 under the Act.[6] Section 6(b)(5) of the Act requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(6) of the Act provides that the rules of an exchange provide that its members and associated persons be appropriately disciplined for violations of the Act and the rules of the exchange.

In Section 11A of the Act, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposed rule change should help to ensure the timely availability of information with respect to quotations.

The Display Rule, which the Commission adopted under Section 11A of the Act, requires specialists to display immediately, *i.e.*, as soon as practicable (which under normal market conditions means no later than 30 seconds from the time of receipt)[7] the price and full size of customer limit orders that would improve the bid or offer in a security or add to the size of the best bid or offer. The Commission believes that displaying customer limit orders benefits investors by providing enhanced execution opportunities and improved transparency.[8] The Commission finds that the proposal reinforces the obligations of an exchange specialist to display immediately certain customer limit orders in accordance with Sections 6 and 11A of the Act and the Display Rule.

Although the Commission believes that certain violations of the Display Rule are amenable to efficient and equitable enforcement and therefore are appropriate for inclusion in the Exchange's Plan, because a violation of the Display Rule amounts to a violation of federal securities law, the Commission expects that the Exchange will err on the side of caution in disposing of such violations under the Plan. The Commission expects the Exchange will continue to resolve intentional violations of the Display Rule through formal disciplinary proceedings.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the provisions of the Act, and in particular with Sections 6(b)(5), 6(b)(6), 11A(a)(1)(C)(iii) and (iv) of the Act, and rule 11Ac1–4 under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the act,[9] that the proposed rule change (SR–BSE–99–04), be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.11Ac1–4.

[4] Securities Exchange Act Release No. 41396 (May 13, 1999) 64 FR 27609.

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

[6] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(b)(6), 15 U.S.C. 78k–1(a)(1)(C)(iii) and (iv), and 17 CFR 240.11Ac1–4.

[7] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release''). A specialist is not displaying customer limit orders immediately if the specialist regularly executes customer limit orders at, for example, the 27th second after receipt. The requirement that a limit order be displayed ''immediately'' means that the limit order must be displayed as soon as practicable, but no later than 30 seconds after receipt under normal market conditions. This 30 seconds is an outer limit under normal market conditions and is not to be interpreted as a 30-second safe harbor.

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41702; File No. SR–CBOE–98–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 to the Proposed Rule Change To Amend the Firm Quote Requirement

August 4, 1999.

On December 15, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the

Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change to amend the Exchange's firm quote requirement. The proposed rule change was published for comment in the **Federal Register** on January 28, 1999.[2] The CBOE submitted Amendments No. 1[3] and 2[4] to the proposed rule change on April 15, 1999, and July 28, 1999, respectively. The Commission received no comments on the proposal. This order approves the approval, as amended.

I. Description of the Proposal

The Exchange proposes to amend CBOE Rule 8.51(a)(2), CBOE's firm quote provision, to require that trading crowds be firm for a number of contracts on less than the RAES contract limit applicable to that class of options.[5] CBOE also proposes to make conforming changes to Interpretation and Policies .01 and .06. The proposal would permit the appropriate Floor Procedure Committee (''FPC'') to establish the firm quote requirement for each particular class of options traded on RAES provided that the requirement is no less than the RAES contract limit and no more than 50 contracts. For classes or series that are not traded on RAES, the appropriate FPC may establish a firm quote requirement between 10 and 50 contracts.[6]

The firm quote requirement will apply at all times,[7] except during an opening or closing trading rotation. Unless there is a contrary ruling by two Floor Officials, the requirement obligates a trading crowd to sell (buy) the established number of contracts at the offer (bid) which is displayed when a buy (sell) customer order reaches the trading station where the particular option class is located for trading. Currently, paragraph (a)(2) of Rule 8.51 requires trading crowds to buy (sell) at least ten (10) contracts under these circumstances.

Because RAES is essentially a form of electronic firm quote, the Exchange believes that in most cases, the firm quote requirement should be no less than the RAES contract limit for a particular options class. In fact, in deciding to raise the firm quote requirement, the Exchange noted that the appropriate FPC responsible for setting the contract limit for RAES in particular option classes recently increased the RAES maximum contract size, such that in most cases the RAES contract limit is now higher than the firm quote requirement.[8] Exchange Rule 8.51 will continue to provide that the appropriate Market Performance Committee may determine the classes and series that will be subject to the requirements of the Rule.

The CBOE also is amending Interpretation and Policy .06 to Rule 8.51 to clarity that the firm quote requirements for spreads and straddles applies only in equity options.[9] The CBOE notes that policy was clearly stated in File No. SR–CBOE–94–54 and in the Commission's order approving that filing.[10] However, the rule language itself does not reflect this limitation. Thus, the CBOE is making this change to clarify in the rule text what was originally intended by that rule filing.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of section 6(b)(5) of the Act[11] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that the proposal should provide greater depth to the option market and benefit public customers by ensuring that they receive fills of their orders for a greater number of contracts. Moreover, the Commission believes that allowing the FPC to set the firm quote requirement on a class by basis within a given range (*i.e.*, no less than the RAES limit and no more than 50 contracts) will give the Exchange the flexibility to respond to competitive pressures from other markets for multiply listed options while not imposing an undue burden on firms that trade those option classes.

Moreover, as CBOE notes, Rule 8.51 is unclear in its application to spreads and straddles, although the Commission order approving the proposal clearly indicates that the provision only applies to equity options as opposed to index and equity options. As a result, the Commission believes it is appropriate to clarify that the firm quote requirement for spreads and straddles applies only to equity options.

Pursuant to section 19(b)(2) of the Act,[12] the Commission finds good cause to approve Amendments No. 1 and 2 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register** because the Amendments do not present any new regulatory issues.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and 2, including whether those amendments are 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–

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Exchange Act Release No. 40957 (Jan. 20, 1998), 64 FR 4485.

[3] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 13, 1999 (''Amendment No. 1''). Amendment No. 1 explains why the Exchange believes the proposed rule change will not have anti-competitive effects on small market-makers.

[4] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated July 27, 1999 (''Amendment No. 2''). Amendment No. 2 sets forth the circumstances under which Floor Officials may grant an exemption to or suspend the firm quote requirement. These include the declaration of a fast market, a system malfunction, an influx or orders, or other unusual circumstances that cause displayed quotations to be inaccurate or not current. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] The appropriate Floor Procedure Committee determines the size of orders eligible for entry into RAES. The maximum RAES order size is generally 20 contracts. All classes of securities traded on the Exchange, except Long Term Equity Anticipation Securities (''LEAPS''), are traded on RAES. The firm quote requirement will not apply to orders received from other exchanges or broker/dealers. Phone call between Stephanie C. Mullins, Attorney, CBOE, and Sonia Patton, Attorney, Division, Commission, on June 7, 1999.

[6] The new form quote requirement will remain in effect for that options class indefinitely or until the FPC changes it. The FPC meets once every two weeks. The discretion given to the FPC by the proposed rule change to establish a different firm quote requirement between the RAES contract limit and 50 contracts for a particular class of options is intended to enable the FPC to respond to general trading trends in a given options class. Phone call between Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, Sonia Patton, Attorney, Division, Commission and Constance Kiggins, Special Counsel, Division, Commission, on January 6, 1999.

[7] Under Exchange Rule 8.51(a)(3), however, any two Floor Officials may suspend the firm quote requirement for a class or a series within a class, if it is in the interest of a fair and orderly market.

[8] *See* Regulatory Circulars RG98–102, RG98–117, RG 98–119.

[9] The term ''spreads and straddles'' refers to two-part equity option orders in which the component series are on opposite sided of the market and in a one-to-one-ratio.

[10] Securities Exchange Act Release No. 35785 (May 31, 1995), 60 FR 30125 (June 7, 1995).

[11] 15 U.S.C. 78f(b)(5). In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2).

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, in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–53 and should be submitted by September 1, 1999.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–98–53), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41657; File No. SR–DTC–99–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 6, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–99–17) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

[1] 15 U.S.C. 78s(b)(1).

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

The proposed rule change filed by DTC involves proposed arrangements to integrate DTC and National Securities Clearing Corporation (''NSCC''). The proposal provides for the following:

- DTC and NSCC will form a New York corporation (''Holding Company'') for the purpose of owning directly all of the outstanding stock of NSCC and owning indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.
- After receipt of all necessary regulatory approvals, the Holding Company will conduct exchange offers in which current DC stockholders will have the opportunity to exchange their DTC shares for newly-issued Holding Company common stock on a one-for-one basis and the two current stockholders of NSCC will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares (''Exchange Offers'').
- The Holding Company will elect as the Directors of DTC and NSCC the persons elected by the stockholders of the Holding Company.
- As subsidiaries of the Holding Company, DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own members pursuant to separate legal arrangements and separate risk management procedures.
- The Holding Company itself will not engage in clearing agency activities. Certain support functions, including Human Resources, Finance, Audit, General Administration, Corporate Communications, and Legal will be centralized in the Holding Company, and the Holding Company will provide those services to each of the two subsidiary clearing agencies pursuant to service contracts.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At their meetings in February 1999, the Boards of Directors of DTC and NSCC voted to proceed with a plan for the integration of the two clearing agencies. A principal goal of the plan is to facilitate the development and timely execution of a strategy to harmonize the processing streams at DTC and NSCC for the clearance and settlement of both institutional and broker transactions. This strategy is intended to accommodate shortened settlement cycles and increased volumes, to improve risk management, and to lower transaction processing costs.

An initial step in the plan was the identification from among the incumbent directors of both Boards of a single group of individual to serve as the Board of Directors for each of the two companies. Since simply adding the membership of DTC's Board of NSCC's Board would have resulted in certain user and marketplace organizations having more than one representative, each of these organizations was asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management Directors, a group of twenty-seven persons was identified. That group has been elected as NSCC Board of Directors by NSCC's stockholders. Since federal banking law applicable to DTC limits the maximum size of DTC's Board to twenty-five members, two of the persons to NSCC's Board will participate in DTC Board meetings as non-voting advisors. The remaining twenty-five persons have been elected as DTC's Board of Directors by DTC stockholders.[3] The next steps in the integration plan, conducting the Exchange Offers and implementing certain stock ownership and corporate governance arrangements for the Holding Company, are the subjects of the proposed rule change.

The Holding Company will issue two classes of stock in connection with the Exchange Offers: common stock to be owned initially by current DTC stockholders and preferred stock to be owned in equal amounts by the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers, Inc. (''NASD''), the current stockholders of NSCC. As explained in more detail below, DTC believes that DTC and NSCC will satisfy the fair representation requirement of Section

[3] *See* Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 [File No. SR–DTC–99–08] (order approving proposed rule change).