

bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-1484 Filed 1-17-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43827; File No. SR-CBOE-00-60]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Change Its Membership Application Posting Process and Clarify Its Membership Rules

January 9, 2001.

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 November 22, 2000, the Chicago Board Options Exchange, Inc. ("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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to change its membership application posting process and to make some clarifying revisions to its membership rules.

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

#### Chicago Board Options Exchange, Incorporated—Rules

\* \* \* \* \*

#### Chapter III—Membership

\* \* \* \* \*

#### Application Procedures and Approval or Disapproval

##### Rule 3.9.

(a)–(d) Unchanged.

(e) Within a reasonable time following receipt of an application for membership *from an applicant that has not been a member within 6 months prior to the date of receipt of the application by the Membership Department*, an application to change membership capacity statutes set forth in Rule 3.2(b) or 3.3(b), or an application to change Clearing Members, the name of the applicant and the application request shall be published in the Exchange Bulletin and posted on the Exchange Bulletin Board. The Membership Committee shall determine for each type of the foregoing applications the required time period that the above information must be posted on the Exchange Bulletin Board, provided that in no event shall any such required posting period be less than 10 days. Notwithstanding the foregoing, the required posting period for a member's application to change Clearing Members shall be waived if the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions consent to such waiver in a form and manner prescribed by the Exchange. The Membership Committee may also determine to implement a posting period requirement for other types of applications submitted pursuant to paragraph (a) of this Rule. The Membership Committee may shorten or waive a required posting period for an applicant if the Membership Committee determines that doing so is warranted due to extenuating circumstances.

(f) The Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to Rule 3.6(b), and each applicant applying to be an individual member (with the exception of *any associated person applicant that is a current member*, any [individual] member applicant *that* [who] was a [an individual] member within 6 months prior to the date of receipt of that applicant's membership application by the Membership Department, *and any member or associated person applicant that was investigated by the Membership Department within 6 months prior to the date of receipt of that applicant's application by the Membership Department*). The Membership Department may [also] investigate *any applicant that is not required to be investigated pursuant to*

*this paragraph (f) and any other person or organization that submits an application pursuant to paragraph (a) of this Rule.*

(g) Unchanged.

(h) The Membership Committee may approve an application submitted pursuant to paragraph (a) of this Rule only if any applicable posting period requirement pursuant to paragraph (e) of this Rule has been satisfied, any investigation pursuant to paragraph (f) of this Rule has been completed, and any applicable orientation and exam requirements pursuant to paragraph (g) of this Rule have been satisfied.

\* \* \* Interpretations and Policies:

.01-.02 Unchanged.

\* \* \* \* \*

#### Purchase of Membership

##### Rule 3.13.

(a)–(b) Unchanged.

(c) Payment. Not later than the second business day following the acceptance of a bid pursuant to paragraph (a) of this Rule or the matching of a bid and offer pursuant to paragraph (b) of this Rule, the purchaser shall deliver to the Membership Department a certified or cashier's check *in the amount of the purchase price* made payable to the Exchange [covering the purchase price of the membership] *or complete a wire transfer in the amount of the purchase price to an Exchange account designated the Exchange.*

#### Sale and Transfer of Membership

##### Rule 3.14.

(a)–(b) Unchanged.

(c) Transfer by Owner. The owner of a transferable membership may transfer the membership without adhering to the provisions contained in Rule 3.13(b) and paragraph (a) of this Rule so long as one of the following qualifying circumstances is applicable to and descriptive of the desired transfer and the transferee is approved to be an owner or lessor:

(i) The owner of a transferable membership (whether or not the membership is registered for a member organization) requests the transfer of the membership to the member's spouse, brother, sister, parent, child, grandparent, or grandchild;

(ii) The owner of a transferable membership requests the transfer of the membership to an organization which has succeeded, through statutory merger, exchange of stock, or acquisition of assets to the business of the transferor;

(iii) The owner of a transferable membership requests the transfer of the

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

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

membership to an organization in which the transferor will maintain an interest at least equal in value to the current market price of the membership; or

(iv) The owner of a transferable membership requests the transfer of such membership to an individual or organization which is a partner or shareholder *with a 50% or greater interest in* [of] the transferor as part or all of a [liquidation] distribution of the transferor.

(d)(i)–(d)(vii) Unchanged.

(viii) The grant of an Authorization to Sell a membership shall include the grant of a security interest (A) in any proceeds from the sale of the membership that the grantee of the Authorization to Sell is entitled to receive pursuant to Rule 3.15(v)[,] and (B) *in the membership to the extent necessary to establish the priority of the preceding security interest in such proceeds.* A [a] properly executed Authorization to Sell form that has been filed with the Membership Department shall constitute a security agreement which grants the foregoing security interest to the grantee of the Authorization to Sell. The grantee of an Authorization to Sell may act to perfect the foregoing security interest under applicable law, which may include the filing of one or more UCC–1 Financing Statements. However, failure by a grantee of an Authorization to Sell to perfect the foregoing security interest under applicable law shall not affect the rights of the grantee under the Rules. In the event of a cancellation of an Authorization to Sell pursuant to paragraph (d)(iv) of this Rule, the grantee of the Authorization to Sell shall promptly file a Termination Statement with every filing authority where UCC–1 Financing Statement were filed with respect to the Authorization to Sell. The grantee of an Authorization to Sell shall promptly file with the Membership Department a file-stamped copy of any UCC filings made with respect to the Authorization to Sell.

\* \* \* \* \*

## Member Death Benefit

### Rule 3.24

(a) Unchanged.

(b) The following individuals shall be eligible for the Member Death Benefit:

(i) any individual who is an active member at the time of his or her death; and

(ii) any individual who (i) was an active member within 90 days prior to the date of his or her death and (ii) was an active member during at least 274 out of 365 days preceding the date of his or

her last termination from active member status.

(c) For the purposes of this Rule, the term “active member” shall mean any *individual member* [natural person] who is a nominee of a member organization, a Chicago Board of Trade exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee.

(d)–(e) Unchanged.

\* \* \* \* \*

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The purpose of this proposed rule change is to change the Exchange's membership application posting process and to make some clarifying revisions to the Exchange's membership rules.

CBOE Rule 3.9(e) requires that a posting be included in the Exchange Bulletin and on the Exchange Bulletin Board with respect to any application for membership, any application from a current member to change membership capacity statuses, and any application to change Clearing Members (unless the posting is waived under certain specified circumstances in accordance with the provisions of the Rule). CBOE Rule 3.9(e) also provides that the posting period on the Exchange Bulletin Board be no less than ten days, and that the Exchange's Membership Committee shall determine the required posting period for each of these types of applications in conformity with this minimum time period. The posting period for each of these application categories is fourteen days. The posting is required to set forth the name of the applicant and the application request, and its purpose is to provide members with an opportunity to submit information concerning an applicant that may bear on the applicant's qualifications and fitness for

membership under the Exchange's rules. Under CBOE Rule 3.9(h), an application may not be approved, among other things, until any applicable posting requirement has been satisfied.

There are two related factors that have caused the Exchange to propose changing its membership application posting process. First, the Exchange receives no submissions from members in response to the postings for the vast majority of applicants that are posted to the membership on the Exchange's Bulletin Board as part of the posting process. Second, the Exchange has a less extensive and shorter application process for current members that are applying to change membership capacity statutes and for member applicants that have been a member within the prior six months. In most cases, the Exchange is able to process these applications well before the expiration of the posting period. According, the vast majority of these applicants are required to wait for a period of time following the completion of the processing of their applications for their new membership capacities to become effective. This results in inefficiency in the conduct of business on the Exchange as well as inconvenience to these applicants.

As a result, the Exchange is proposing to change its membership application posting process in a manner that seeks to eliminate this inefficiency and inconvenience while at the same time preserving the ability of members to submit information concerning the qualifications and fitness for membership of applicants. Specifically, the Exchange is proposing to amend CBOE Rule 3.9(e) to eliminate the requirement that there be a posting period for current members that are applying to change membership capacity statuses and for member applicants that have been a member within the prior six months. Additionally, the Exchange intends to notify its membership via circular that the Membership Department will accept submissions concerning any current or former member at any time (in contrast to the current limited formal submission period during the posting period) and that these submissions will be retained in the member's membership file.<sup>3</sup> Subsequently, if a current or former member submits any membership

<sup>3</sup> The CBOE indicated that the circular will be detailed and widely disseminated. The circular will be attached to the back of the CBOE rule book and made readily available to the public. Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission (Jan. 5, 2001).

application and there is a submission for that current or former member in the membership file at the time of submission of the application, the submission concerning that current or former member will be reviewed and considered in the same manner that occurs under the posting process.

The Exchange is proposing to retain the posting period requirement for new membership applicants (*i.e.*, those membership applicants that have never been a member or that have not been a member within the prior six months). The posting period generally does not result in a delay in processing these applications because they are subject to a more extensive and longer application process that takes in excess of fourteen days (during which there is adequate time to complete a fourteen day posting). In addition, the Exchange is proposing to retain the posting period for an application to change Clearing Members (which in the vast majority of cases is waived pursuant to the current provision of CBOE Rule 3.9(e), which provides for the waiver of this posting period if the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions consents to such a waiver).

The Exchange is also proposing to make the following clarifying changes to its membership rules:

First, the Exchange is proposing to revise CBOE Rule 3.9(f) to clarify those categories of membership applicants for which the Exchange does not conduct a background investigation due to the fact that the applicant is a current member, the applicant was recently a member, or the Exchange recently conducted a background investigation concerning the applicant. Specifically, CBOE is proposing to revise Rule 3.9(f) to clarify that the Membership Department is not required under CBOE Rule 3.9(f) to investigate the following categories of applicants: (i) Any associated person applicant that is a current member, (ii) any member applicant that was a member within six months prior to the date of receipt of that applicant's membership application by the Membership Department, and (iii) any member or associated person applicant that was investigated by the Membership Department within six months prior to the date of receipt of that applicant's application by the Membership Department. In addition, CBOE is proposing to revise Rule 3.9(f) to clarify that the Membership Department retains the discretion to investigate any applicant that is not required to be investigated under CBOE Rule 3.9(f) if the Membership Department determines that a

background investigation is warranted under the circumstances.

Second, CBOE is proposing to revise Rule 3.13(c) to clarify that the Exchange will accept payment for the purchase of a membership by a certified or cashier's check or via a wire transfer.

Third, the Exchange is proposing to clarify the provisions of CBOE Rule 3.14(c)(iv). CBOE Rule 3.14(c)(iv) sets forth one of the four circumstances pursuant to which a membership may be transferred without going through the normal auction process for the purchase and sale of Exchange memberships. Specifically, CBOE Rule 3.14(c)(iv) provides that the owner of a transferable membership may request the transfer of the membership to an individual or organization which is a partner or shareholder of the transferor as part or all of a distribution of the transferor. Under CBOE Rule 3.3.01, the transferee could also be a limited liability company member if the transferor were a limited liability company. CBOE is proposing to clarify Rule 3.14(c)(iv) in two respects. First, CBOE is proposing to revise Rule 3.14(c)(iv) to clarify that the transferee must have at least a fifty percent interest in the transferor. Without this provision, a person could avoid the normal membership auction process by becoming a nominal partner or shareholder in a member organization and then having the member organization transfer the membership to that partner or shareholder. Second, CBOE is proposing to revise Rule 3.14(c)(iv) to delete the word "liquidation" due to the fact that it results in confusion as to what constitutes a liquidation distribution and what constitutes a non-liquidation distribution (given that an entity can have partial liquidation in which it does not distribute all of its assets and continues in operation following the partial liquidation). Because the Exchange has interpreted Rule 3.14(c)(iv) to permit membership transfers in connection with partial liquidation distributions, and because the Exchange believes there is no meaningful distinction in this context between a partial liquidation distribution and a regular distribution, the Exchange is proposing to delete the word "liquidation" to make it easier for members to understand CBOE Rule 3.14(c)(iv).

Fourth, the Exchange is proposing to clarify the nature of the security interest received by the grantee of an Authorization to Sell under CBOE Rule 3.14(d)(viii). CBOE Rule 3.14(d) provides an owner of a transferable membership the ability to voluntarily grant to another member an

Authorization to Sell the membership. The grantee of an Authorization to Sell is vested with all of the authority provided for under the Exchange's Constitution and Rules relating to the sale of the membership. The grantee of an Authorization to Sell also has the right on the sale of the membership to submit claims against the grantor pursuant to CBOE Rule 3.15(b), to be satisfied out of the proceeds of the sale of the membership, that are related to the grantor's Exchange business activities. CBOE Rule 3.14(d)(viii) provides that the grant of an Authorization to Sell a membership includes the grant of a security interest in any proceeds from the sale of the membership that the grantee of the Authorization to Sell is entitled to receive under CBOE Rule 3.15(b). The exchange is proposing to revise CBOE Rule 3.14(d)(viii) to clarify that the grant of an Authorization to Sell also includes the grant of a security interest in the membership itself to the extent necessary to establish the priority of the security interest in the membership sale proceeds the grantee is entitled to receive under CBOE Rule 3.15(b). The Exchange has interpreted CBOE Rule 3.14(d)(viii) to provide for such a security interest in the membership itself and believes that the grant of such a security interest is fairly and reasonably implied from the existing language of CBOE Rule 3.14(d)(viii). The Exchange is simply proposing to revise CBOE Rule 3.14(d)(viii) to make the language of CBOE Rule 3.14(d)(viii) more explicit in this regard.

Finally, the Exchange is proposing to revise CBOE Rule 3.24, the Exchange's Member Death Benefit Rule, to make clear that the term "active member" under that Rule only includes individual members and is not intended to include associated persons who are not individual members pursuant to the Exchange's Rules. Specifically, the definition of the term "active member" in CBOE Rule 3.24(c) would be revised to replace the words "natural person" in that definition with the words "individual member." The remainder of the definition of "active member" in CBOE Rule 3.24(c) would not be revised. Thus, as revised, the definition of "active member" contained in CBOE Rule 3.24(c) would state that the term "active member" shall mean any individual member who is a nominee of a member organization, a Chicago Board of Trade exerciser, a lessee of an Exchange membership, or an owner of an Exchange membership that is not being leased to a lessee. CBOE Rule 3.24(b) provides that the following

individuals are eligible for the member Death Benefit: (i) Any individual who is an active member at the time of his or her death; and (ii) any individual who (a) was an active member within ninety days prior to the date of his or her death, and (b) was an active member during at least 274 out of the 365 days preceding the date of his or her termination from active member status.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and in particular, with Section 6(b)(5) of the Act,<sup>5</sup> in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change seeks to revise the Exchange's membership application posting process in a manner that will reduce inefficiency in the conduct of business on the Exchange and inconvenience to membership applicants while preserving the ability of members to submit information concerning the qualifications and fitness for membership of membership applicants. The proposed rule change will also clarify certain provisions of the Exchange's membership rules making it easier for members to understand those rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on 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 Exchange 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 statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-60 and should be submitted by February 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-1407 Filed 1-17-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43829; File No. SR-CBOE-00-10]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1, to Permit the Chairman of the Appropriate Floor Procedure Committee to Decrease the Size of Orders Eligible for Entry Into the Retail Automatic Execution System During Unusual Market Conditions**

January 10, 2001.

## I. Introduction

On March 28, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities

and Exchange Commission ("Commission") 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> a proposed rule change that would grant the Chairman of an appropriate Floor Procedure Committee ("FPC"), or his designee, the authority to decrease the size of orders eligible for entry into the Exchange's Retail Automatic Execution System ("RAES") during unusual market conditions. On January 3, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on June 8, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposal.

## II. Description of Proposal

Currently, the appropriate FPC of the CBOE has the authority to determine the size of orders eligible for entry into RAES up to a maximum of seventy-five contracts.<sup>5</sup> In this proposal, the Exchange is seeking to amend Interpretation .05 to Rule 6.8, *RAES Operations*, to allow the Chairman of the appropriate FPC, or the Chairman's designee,<sup>6</sup> to exercise the authority of the FPC to decrease the size of orders eligible for entry into RAES for option classes during unusual market conditions.<sup>7</sup>

In its filing, the Exchange represented that it is sometimes necessary to temporarily reduce the eligible order size levels for RAES in situations where unusual market conditions exist. However, under the current Exchange rules, a decision to decrease the eligible

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

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

<sup>3</sup> See Letter from Angelo Evangelou, Counsel, CBOE, to Jennifer Colihan, Attorney, Division of Market Regulation ("Division"), Commission, dated January 2, 2001. ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the Chairman may designate his authority solely to: (1) another member of the FPC, or (2) or (2) two CBOE floor officials.

<sup>4</sup> See Securities Exchange Act Release No. 42862 (May 30, 2000), 65 FR 36481.

<sup>5</sup> See Exchange Rules 6.8(a)(i) and 6.8(e). The Commission recently approved a proposed rule change by the Exchange to increase the maximum size of RAES-eligible orders to seventy-five contracts. See Securities Exchange Act Release No. 43517 (November 3, 2000), 65 FR 69082 (November 15, 2000).

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>7</sup> The Exchange has represented that the minimum level to which the Chairman, or his designee, may decrease the size of orders eligible for entry into RAES pursuant to the proposed rule is ten contracts. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Jennifer Colihan, Attorney, Division, Commission, on September 8, 2000.

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).