

the Act. For the reasons stated above, applicants believe that the requested relief meets this standard.

#### Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Sub-Advisory Agreement will have the same terms and conditions as the Existing Sub-Advisory Agreement, except for the effective and termination dates.

2. Fees earned by CF and paid by the Fund during the Interim Period in accordance with the New Sub-Advisory Agreement will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid to CF only after the requisite shareholder approval is obtained, or in the event such approval is not obtained, to the Fund.

3. The Fund will hold a meeting of its shareholders to vote on the approval of the New Sub-Advisory Agreement on or before the 120th day following the termination of the Existing Sub-Advisory Agreement on the Effective Date (but in no event later than December 31, 1996).

4. CF and/or UAM will pay the costs of preparing and filing this application. CF and/or UAM will pay the costs relating to the solicitation of the Fund shareholder approval, to the extent such costs relate to approval of the New Sub-Advisory Agreement necessitated by the Merger.

5. CF will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund under the New Sub-Advisory Agreement will be at least equivalent, in the judgment of the Fund's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Agreement caused by the Merger, CF will apprise and consult with the Board of the Fund to assure that the Board, including a majority of the Independent Directors members, is satisfied that the services provided by CF will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.  
Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-37633; File No. SR-CBOE-96-36]

#### Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Deactivation of RAES During Unusual Market Activity

September 4, 1996.

##### I. Introduction

On June 12, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "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> to allow the interruption of the Exchange's Retail Automatic Execution System ("RAES") due to unusual market activity. The proposed rule change was published for comment and appeared in the Federal Register on July 3, 1996.<sup>3</sup> No comments were received regarding the proposal. This order approves the Exchange's proposal.

##### II. Description of the Proposal

The Exchange proposes to add a new paragraph (e) to CBOE Rule 6.6 that will authorize Order Book Officials ("OBOs") and, in the case of options traded at Designated Primary Market Maker ("DPM") stations, Post Directors to deactivate RAES for a period not to exceed five minutes in specified classes of options traded at the posts where such persons are stationed when in their judgement such action is warranted by an influx of orders or other unusual market conditions in such options or their underlying securities and the OBO or Post Director determines that such action is appropriate in the interests of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES, provided that the necessary conditions provided for in Rule 6.6 have been met.<sup>4</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 37364 (June 25, 1996), 61 FR 34911.

<sup>4</sup> The Exchange represents that two Floor Officials will promptly exercise their authority under Rule 6.6 once notified of the RAES deactivation by the OBO or Post Director. The proposal also provides that the two Floor Officials will make all further determinations pursuant to Rule 6.6 regarding the particular options class once they arrive at the particular trading post, but until such time the OBO or Post Director can reactivate RAES if they determine such action is in the interest of a fair and orderly market. Telephone conversation between

The Exchange believes that this proposed rule change should allow a more immediate response to temporary order imbalances related to market disruptions in stocks that underlie options traded on CBOE caused by certain events, such as significant news announcements. The Exchange believes that in these situations stock prices may move sharply, and Exchange market-makers may not have time to adjust their options quotes in the numerous series of options that overlie these stocks. The Exchange notes that this may result in published options quotes that do not reflect current stock prices. Because orders sent to RAES are executed automatically at published quotations, the Exchange believes that customers may receive executions at stale prices, which may be more favorable, or less favorable, than fair market price.

Exchange Rule 6.6 currently authorizes two Floor Officials to respond to this situation by declaring the market in particular classes of options to be "fast," and then turning off RAES (and taking other action) until there has been time for prices to be adjusted. The Exchange believes that because of the speed with which computerized order routing systems can direct orders to RAES, and because RAES itself provides for instantaneous automatic executions, there can be a significant number of executions at prices that do not reflect the current state of the market during the several minutes that it could take for two Floor Officials to declare a fast market. The Exchange believes that by authorizing OBOs and Post Directors to turn off RAES for up to five minutes during unusual market activity, the response time to such a situation will be considerably shortened, and the number of executions at inaccurate prices should be reduced accordingly. Currently, Post Directors or OBOs are authorized to suspend trading in specific classes of options for up to five minutes when there is a trading halt of suspension of trading in the underlying security in the primary market pursuant to CBOE Rule 6.3. The Exchange notes that the OBOs and Post Directors, in those situations, are able to deal quickly and on an interim basis when an immediate response is necessary, pending further consideration of the matter by two Floor Officials.

The Exchange anticipates that in most instances where RAES is deactivated by

Michael Meyer, Schiff Hardin & Waite, and John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on August 27, 1996.

an OBO or Post Director, the period of time when RAES is unavailable should be very brief, lasting fewer than five minutes. Even then, orders will continue to be delivered to the trading crowd via the Exchange's electronic order routing system ("ORS") and the trading crowd will remain obligated to fill customer orders in accordance with Exchange rules, including the firm quote rule.<sup>5</sup> Accordingly, orders that would have been routed to RAES will be automatically re-routed to a Public Automated Routing System ("PAR") workstation,<sup>6</sup> a floor broker printer in the trading crowd, or to the appropriate member firm booth, where they can be immediately executed at the then current price.

Members will be notified of any deactivation of RAES in particular classes of options by an OBO or a Post Director pursuant to proposed Rule 6.6(e) by means of a message that is printed to each trading post on the floor and is transmitted to terminals throughout the floor over the Exchange's TextNet system.

### III. Commission Finding and Conclusions

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, and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>7</sup> Specifically, the Commission finds that the Exchange's proposal strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed rule change is reasonable in that it provides Post Directors and OBOs the limited authority to suspend RAES for no more than five minutes in a particular options classes during unusual market conditions. The Commission believes that Post Directors

and OBOs are appropriate parties, to exercise this limited authority, in part, because of (1) their knowledge of assigned options classes, (2) their close proximity with the trading crowd, and (3) their clearly defined administrative role with the Exchange. Accordingly, the Commission believes that Post Directors and OBOs should be able to initially assess market conditions and deactivate RAES for this limited period, thereby reducing the potential for orders being executed at inaccurate prices until Floor Officials can further assess the market conditions. The Commission notes that the standard for OBOs and Post Directors to deactivate RAES is the same standard used by Floor Officials to declare a fast market, which in turn, authorizes Floor Officials to deactivate RAES if they determine that such action is in the interest of maintaining a fair and orderly market.

The Commission notes that two Floor Officials, once immediately notified by the OBO or the Post Director of the RAES deactivation, must promptly determine whether to (1) immediately reactivate RAES pursuant to Rule 6.6(c); or (2) declare a fast market pursuant to Rule 6.6(b) in order to continue the deactivation of RAES for that particular options class.<sup>8</sup> Under no circumstances, can the deactivation of RAES continue for more than five minutes, unless two Floor Officials declare a fast market pursuant to Rule 6.6(b).<sup>9</sup>

Additionally, the Commission believes that the proposed rule change is reasonable because during this limited five-minute period when RAES is deactivated by the Post Director or OBO, orders that would have been routed to RAES will be automatically re-routed to a PAR workstation, a floor broker printer in the trading crowd, or to the appropriate member firm booth, where they can be immediately executed at the then current price. Accordingly, the Commission believes that the Exchange's electronic ORS should provide small investors an efficient and effective method for order execution in circumstances where RAES is turned off pursuant to this proposed rule change.

The Commission expects that such authority as proposed herein, will only be exercised when unusual market conditions exist, and for the shortest time possible. As a general matter, the commission prefers that automated systems such as RAES remain operational at all times. While extreme circumstances may call for the deactivation of the system, it should only be done when absolutely necessary.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-CBOE-96-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-37640; File No. SR-Phlx-96-14]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Universal Trading System's Morning Session

September 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 29, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 self-regulatory organization. On July 26, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>1</sup> 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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to implement a daily pre-opening order matching session

<sup>5</sup> The firm quote rule, which obligates the trading crowd to fill public orders for up to 10 contracts at published quotes, remains in effect unless suspended by two Floor Officials acting under Rule 6.6(b) in the event of a fast market. The proposed rule change would not authorize an OBO or DPM to declare a fast market or suspend the firm quote rule.

<sup>6</sup> A PAR workstation is an automated, computer-based workstation that provides users with the ability to execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating the delay inherent in a keyboard-based system.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Commission understands that if two Floor Officials declare a fast market, they have the authority to, among other things, continue the deactivation of RAES, suspend the firm quote requirement of Rule 8.51(a), or take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market. See CBOE Rule 6.6(b).

<sup>9</sup> The Commission notes that the five-minute period is an absolute time limit imposed by the Exchange on Post Director and OBO directed RAES deactivations. Accordingly, the Commission expects that in most situations, two Floor Officials should be able to exercise their authority under Rule 6.6 before the five-minute period has expired.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading, Operations, Phlx, to Jennifer Choi, Division of Market Regulation, SEC, dated July 26, 1996. The Exchange clarifies that it does not propose to trade Nasdaq securities through the Universal Trading System ("UTS") without a computer-to-computer interface to the National Association of Securities Dealers for reporting purposes.