

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-97-39 and should be submitted by August 6, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Amex-97-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40186; File No. SR-CBOE-98-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 Thereto Relating to RAES Eligibility Requirements for OEX and DJX Options

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 May 18, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") 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 the CBOE. On June 24, 1998, the CBOE filed an amendment to the proposal.³ The

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to add a new sub-paragraph to CBOE Rule 24.17, *RAES Eligibility in OEX and DJX*, that would allow a Market-Maker to participate on the Retail Automatic Execution System ("RAES") in both options on the Standard & Poor's 100 Index ("OEX") and options on the Dow Jones Industrial Average ("DJX") during the same calendar month by meeting the eligibility requirements for OEX alone, DJX alone, or eligibility requirements which consider the percentage of transactions and contracts a Market-Maker transacted in OEX and DJX combined. The text of the proposed rule change is available at the Office of the Secretary, the 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

Currently, CBOE Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Because of the high percentage requirement, a Market-Maker who qualifies to participate in RAES in either OEX or DJX would not be able to qualify to participate in RAES in the other class. In fact, the Exchange believes the seventy-five percent requirement is so high that it serves as a disincentive for a Market-Maker on

one side of the common structure in which OEX and DJX are traded to move into the other side of the structure to trade the other option product for fear that the Market-Maker will no longer qualify for RAES in his primary trading area.

The Exchange believes, however, that a strength of the Market-Maker system is the ability of Market-Makers to move from one trading pit to another to provide liquidity and capital when market conditions warrant. Because the traders in OEX or DJX stand right next to each other in the same physical trading structure, they are in the best position to provide added liquidity and capital to the products by moving from one side of the trading structure to the other. Consequently, the Exchange determined to add new sub-paragraph (b)(vi) to Rule 24.17 to allow a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month (1) by meeting the individual requirements for OEX, (2) by meeting the individual requirements for DJX, or (3) by transacting seventy-five percent of his contracts for the month in both OEX and/or DJX combined and by transacting seventy-five percent of his contracts in OEX and DJX during the month in person. A Market-Maker can participate in RAES in both OEX and DJX during the same calendar month as long as he meets one of the sets of criteria above and as long as the two products continue to be traded at the same physical trading location. It should be noted that in the equity posts on the floor, a Market-Maker may participate in RAES in all classes traded at that post. Although OEX and DJX are technically traded at two separate trading posts, the Market-Makers for each product are separated by a movable railing within the same physical structure. A Market-Maker must be present in the particular trading crowd where the class is traded while he is participating in RAES for that class.

The Exchange proposes to implement this rule change at the beginning of the next calendar month after the rule proposal is approved by the Commission. Finally, the Exchange is proposing to delete current Interpretation .02 because it is no longer relevant now that December 1, 1997 has passed.

2. Statutory Basis

By eliminating a disincentive for Market-Makers, in the physical structure where OEX and DJX are traded, to move between trading pits to provide added liquidity and capital when market conditions warrant, the Exchange believes the proposed rule change is

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Deborah Flynn, Attorney, Division of Market Regulation, Commission, dated June 19, 1998 ("Amendment No. 1"). In Amendment No. 1, the CBOE proposes to amend the proposed rule change to add cross-references to new paragraph (b)(vi) where the Rule only refers to paragraph (b)(v) presently. The proposed change will make clear to joint account participants, or the nominee of the member organization, that the requirements of paragraph (b)(v) need not be met in order to participate in the joint account, or in the firm's Retail Automatic Execution System account, if the requirements for paragraph (b)(vi) are met.

consistent with Section 6 of the Act,⁴ in general, and with section 6(b)(5),⁵ in particular, because it is designed to promote just and equitable principles of trade and to protect 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.

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 the CBOE. All submissions should refer to File No. SR-CBOE-98-20 and should be submitted by August 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40187; File No. SR-CHX-98-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending the Exchange's Clearing the Post Policy for Cabinet Securities

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 June 10, 1998, the Chicago Stock Exchange, Inc. ("CHX" 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 CHX. 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 Exchange proposes to amend interpretation and policy .02 of CHX Rule 10 of Article XX and amend CHX Rule 11 of Article XX relating to clearing the post and to make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers to clear the cabinet post by phone. The text of the proposed rule change is as follows: Additions are italicized; deletions are [bracketed].

ARTICLE XX

Rule 10. Manner of Bidding and Offering.

No change in text.

*** * * Interpretations and Policies**

02. Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers

on the floor of the Exchange must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price execution for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges which fail to clear the Exchange post do not constitute such a course of dealings.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals resident on the Exchange floor constitute "orders" which are "communicated" to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

Method of Clearing the Post. [Subject to Article XX, Rule 11 relating to cabinet securities.] [t] The Exchange's clearing the post policy requires the floor broker or market maker to be physically present *on the Exchange floor and to be present at the post. So long as the floor broker or market maker is physically present on the Exchange floor, a floor broker's or market maker's bids and*

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1994).

² 17 CFR 240.19b-4 (1997).