the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders), the field shall be left empty.

VII. Internet Sites for Downloading Market Center Files

A market center shall make its compressed files available for downloading (via FTP) at a single page on an Internet site that is free of charge and readily accessible to the public.[3] A market center shall make available on such page the files containing at least the three most recent monthly reports of the market center.

VIII. Functions of Designated Participant

Each market center shall be responsible for arranging with a single Participant to act as the market center's Designated Participant.[4] The functions of a Designated Participant are as follows.

(a) Assignment of Market Center and File Identification Codes

A Designated Participant shall assign a unique market center identification code to each market center for which it acts as Designated Participant. If an individual market center's report will be included in a file that contains only that market center's report, the file identification code for the file shall be the same as the market center identification code. If an individual market center's report will be included in a file that contains any additional market center's report (*e.g.,* if the reports for all of an exchange's specialists are included in a single file), the Designated Participant also shall assign a separate file identification code for such file. All Designated Participants will act jointly to assure that no market center or file is assigned a code that previously has been assigned (*e.g.,* by circulating advance notice to all Participants of codes that have been assigned).

(b) Maintenance of Market Center Identification Files

A Designated Participant shall create and maintain a market center identification file (in standard, pipe-delimited (''|'') ASCII format) for each calendar month. Such file shall contain fields setting forth, in order, (A) the identification code for the Designated Participant (as set forth in Section VI(a)(1) of the Plan); (B) all market center identification codes that the Designated Participant has assigned for the month, (C) the full name of the market center (in upper case), and (D) the file identification code applicable to each market center (if different from the market center identification code). A Designated Participant shall make at least the three most recent market center identification files available for downloading (via FTP) on an Internet site that is free of charge and easily accessible to the public.

(c) Maintenance of Internet Site with Links to Download Sites

A market center shall notify its Designated Participant of the hyperlink to the location where the market center's files can be downloaded in accordance with Section VII of the Plan. A Designated Participant shall maintain a comprehensive list of the hyperlinks provided by its market centers at the same location at which market center identification files can be downloaded in accordance with Section VIII(b) of the Plan. As a result, anyone who wishes to download all files for a month can be assured that, if they visit the Internet sites of all Participants, they will find hyperlinks to all files for the month.

(d) Change of Designated Participant

A market center may change the identity of its Designated Participant only by arranging with another Participant to act as a replacement. The Participant that has agreed to act as a replacement Designated Participant shall provide written notice of the change to all other Participants, as well as make such notice available on the Internet site maintained by the replacement Designated Participant under Section VIII(b) of the Plan. The notice shall specify both the past and new market center identification code and file identification code for the market center, or state that the codes have not changed. The change shall not be effective until 30 days after the date of the written notice.

IX. Internet References to Information Required by Rule

When referring to information on Internet sites that the Rule requires to be made available to the public, market centers and Designated Participants shall use the phrase ''Disclosure of SEC-Required Order Execution Information.''

X. Specifying Regular Trading Hours Under the Rule

With respect to the meaning of the term ''regular trading hours'' under paragraph (a)(19) of the Rule, the Participant who maintains the primary listing for a national market system security shall specify the regular trading hours for such security if they are to be other than the time between 9:30 a.m. and 4:00 p.m. Eastern Time. To effect a specification of regular trading hours under this Section X, a Participant shall submit a proposed rule change to the SEC under Section 19 of the Exchange Act. A Participant may specify as regular trading hours for a security only those times when the Participant itself is trading the security.

XI. Withdrawal from Plan

If a Participant ceases to be subject to the Rule or obtains SEC approval for another means of complying with the Rule, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

XII. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

In Witness Thereof, this Plan has been executed as of the 20th day of February 2001 by each of the parties hereto.

[FR Doc. 01–4748 Filed 2–26–01; 8:45 am]

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[3] A market center can maintain its own Internet site at which its files can be downloaded or arrange for another person to maintain the Internet site at which the market center's files can be downloaded (as well as potentially the files of other market centers).

[4] *See* note 1 above for treatment of an entity that acts as a market maker in more than one trading venue and therefore would arrange for a Designated Participant for each market center/trading venue under the Rule.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43984; File No. SR–CBOE–00–13]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Procedures and Requirements for Trading in Joint Accounts in Equity and Index Options

February 20, 2001.

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 April 3, 2000, 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 Exchange. On January 8, 2001, the CBOE filed Amendment No. 1 with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] Letter from Timothy Thompson, Assistant General General Counsel, Legal Department, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 23, 2000 (''Amendment No. 1''). In response to comments from Commission staff, the Exchange submitted Amendment No. 1, which: (i) States that staff at the American Stock Exchange LLC, International Securities Exchange LLC, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. have informed the CBOE that their respective regulatory policies do not include any specific rule or regulatory circular that addresses wash sale transactions or that prohibits trading between joint accounts with common participants; (ii) represents that the proposed rule change makes the CBOE's rules and regulatory policies regarding transactions between related accounts or entities consistent with those in place at the other options exchanges; and (iii) cites three letters that were submitted by CBOE members to the Exchange in support of the rule filing.

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

The CBOE proposes to amend Interpretation .06 to Exchange Rule 8.9 and Exchange Regulatory Circulars RG 98–94 and RG 98–95, which set forth Exchange procedures and requirements for trading in joint accounts in equity and index options, to allow certain transactions between joint accounts that have common participants. The text of the proposed rule change is set forth below. Deletions are in brackets.

* * * * *

RULE 8.9

No change.

Interpretations and Policies:

.01–.05—No change.

.06—No participant in a joint account shall effect a transaction, in person or via order, either for his own account or for the joint account, with another member acting on behalf of the joint account. [In addition, no joint account participant shall cause a transaction to be executed for the joint account with another member acting on behalf of another joint account if the member knows or, in the exercise of reasonable care under the circumstances, the member has reason to know that the two joint accounts have one or more common participants.]

* * * * *

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 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

Section 9(a)(1)(A) of the Exchange Act prohibits any person from effecting any transaction in any securities registered on a national securities exchange, which involves no change in beneficial ownership, for the purpose of creating a false or misleading appearance of active trading in any such security.[4] In the early 1980s, the CBOE adopted a regulatory interpretation of this ''wash sale'' rule that prohibited trading between related accounts with greater than 10% common ownership. The 10% threshold was consistent with the standard used in Exchange Rule 4.11 (Position Limits), which states that common control, among other factors, will be presumed if an individual or entity has greater than 10% ownership. The CBOE's wash sale interpretation is not specifically addressed in any existing CBOE rule; rather, it was largely communicated to the membership verbally, or in written communication regarding non-aggregation of accounts for position limit compliance.[5] Any violation of this prohibition is considered a violation of Exchange Rule 4.1 (Just and Equitable Principles of Trade).

The Exchange adopted Interpretation .06 to Exchange Rule 8.9 to extend this trading prohibition to market maker joint accounts that have common participants. Interpretation .06 to Exchange Rule 8.9 and Exchange Regulatory Circulars[6] state that ''no joint account participant shall cause a transaction to be executed for the joint account with another member acting on behalf of another joint account if the member knows, or in the exercise of reasonable care under the circumstances, the member has reason to know that the two joint accounts have one or more common participants.'' This language expressly imposed a knowledge requirement as an element of the offense of effecting a transaction between joint accounts with common participants.[7]

The Exchange adopted Interpretation .06 event though it believed that, in many instances, the trading in joint accounts with common participants is not effected by the same common joint account participant. The Exchange also recognized that market makers are not always in the position to know whether there are common joint account participants because of the frequency in which joint account composition may change. Although joint accounts may have common participants, common ownership between joint accounts is typically widely diverse.

The CBOE believes that its current interpretation of a wash sale is more restrictive than the rules in place at other national securities exchanges and the SEC.[8] The Exchange represents that its current interpretation of a wash sale does not promote a level playing field for its members vis-à-vis other exchanges' members and thus, places the Exchange at a competitive disadvantage. The Exchange states that it has also received requests from individual members who provide financial backing to other members via joint accounts, and from member organizations with affiliated broker/dealer entities, to provide exemptions from this regulatory policy.[9] These members argued that such related accounts are structured as separate profit centers and are operated by affiliates independently, and separate books and records are maintained for these accounts. Moreover, these members stated that it is burdensome to monitor their associated accounts to ensure that the accounts do not trade together when the common joint account participants are not aware of what the other associated account is trading. Therefore, the Exchange proposes to alter its long-standing regulatory interpretation so that certain transactions effected between joint accounts with common participants would be permitted, provided that such transactions are effected within Exchange rules.

[4] 15 U.S.C. 78i(a)(1)(A).

[5] Members who have been granted non-aggregation pursuant to Exchange Rule 4.11.03 are advised in writing that although non-aggregation has been granted, trading between the subject associated accounts is prohibited.

[6] The Regulatory Circular governing joint account trading in certain index options was approved in Securities Exchange Act Release No. 31174 (September 10, 1992), 57 FR 42789 (September 16, 1992). The Regulatory Circular governing joint account trading in equity options was approved in Securities Exchange Act Release No. 36977 (March 15, 1996), 61 FR 11911 (March 22, 1996.

[7] *See* Securities Exchange Act Release No. 38286 (February 13, 1997), 62 FR 8287 (February 24, 1997) (SR–CBOE–96–70).

[8] The Exchange represents that staff at the American Stock Exchange LLC, International Securities Exchange LLC, Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. have informed the CBOE that their respective regulatory policies do not include any specific rule or regulatory circular that addresses wash sale transactions or that prohibits trading between joint accounts with common participants. The Exchange also believes that under section 9(a)(1)(A) of the Exchange Act, only those transactions that involve no change in beneficial ownership and that are effected for an improper purpose, such as creating a false and misleading appearance of market activity, would be considered a violation of the Exchange Act. *See* Amendment No. 1, *supra* note 3.

[9] Letter from Patricia Levy, General Counsel, and Steven O'Malley, Compliance & Regulatory Officer, Hull Trading Company, LLC, to Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, dated August 13, 1999 (''Hull Letter'') and Letter from William J. Shimanek, Kesssler Asher Clearing, to Pat Cerny, CBOE, dated April 24, 1996 (''Kessler Letter''). The Exchange notes that Kessler Asher Clearing is no longer an effective member of the CBOE. *See* Amendment No. 1, *supra* note 3. The Exchange also received a letter from Fulcrum Investment Group LLC (''Fulcrum'') urging the Exchange to liberalize its policy on wash sales. Letter from Michael J. Carusillo, Chief Executive Officer, and Barbara McHugh, President, Fulcrum Investment Group, LLC, to Pat Cerny, Director, Department of Market Regulation, CBOE, dated July 17, 1998 (''Fulcrum Letter''). This letter is discussed in Section II.C. of this Notice.

The proposed rule change would enable common participants to trade between related joint accounts that are used as financing vehicles without violating Exchange Rule 8.9. The Exchange proposes that the following activity be permitted: (1) Trading between different market makers or other broker/dealer accounts that are financed by the same member where there is no common control over the trading activity in those accounts; and (2) trading between independently operated subsidiaries (*i.e.*, separate broker/dealers) of the same parent or holding company.[10]

The Exchange represents that it will continue to prohibit the following activity: (1) Market makers trading with their joint account, even though their percentage of ownership is less than 100% (for instance, market maker ABC finances market maker XYZ via a joint account and ABC is a participant in the joint account. Ownership is 50% and XYZ makes his own trading decisions. ABC is still prohibited from trading directly with the joint account of which he is a member); (2) nominees of the same entity trading with each other on behalf of the entity; (3) firm traders employed by the same broker/dealer on different trading desks trading together, regardless of whether they are separate profit centers; and (4) spouses trading together.

The Exchange represents that under the proposed rule change, transactions between related joint accounts that are effected for an improper purpose, such as trades executed to create a false and misleading appearance of activity, would continue to violate Exchange Rule 4.1 (Just and Equitable Principles of Trade). The Exchange states that its Department of Market Regulation will continue to monitor trading between accounts with common beneficial ownership for trading abuses.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5),[12] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

[10] The Exchange has represented that it will issue a regulatory circular informing members of permitted and prohibited trading activity among joint accounts.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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 received a letter from Fulcrum urging the Exchange to re-evaluate its policy on trading between joint accounts.[13] Fulcrum states that it is appropriate to allow trading between joint accounts where control has been successfully refuted. In addition, Fulcrum notes that stock exchange interpretations specifically state that a trade between a parent and its wholly-owned broker-dealer affiliate results in a change in beneficial ownership subject to trade reporting, and therefore would not be considered a wash sale. Fulcrum urges the Exchange to relax its policy to permit legitimate trading activity between joint accounts.

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, 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, 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 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 the File No. SR–CBOE–00–13 and should be submitted by March 20, 2001.

[13] Fulcrum Letter, *supra* note 9. In addition, the Exchange represents that its regulatory staff has had numerous conversations with members since the Exchange first considered changing its regulatory policy regarding transactions between accounts with common ownership.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–4755 Filed 2–26–01; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43983; File No. SR–ISE–01–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC, Relating to Anticipatory Hedging Activity

February 20, 2001.

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 January 12, 2001, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') 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 Exchange is proposing to adopt Supplementary Material .02 to Rule 400 (Just and Equitable Principals of Trade). Supplementary Material .02 states that it may be considered conduct inconsistent with just and equitable principles of trade for any member or person associated with a member, who has knowledge of all material terms and conditions of (1) an order and a solicited

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

[2] 17 CFR 240.19b–4.