SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43789; File No. SR–CBOE–00–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rule Governing the Operation of Its Firm Quote Rule To Permit Split-Price Executions

January 2, 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 August 18, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') field with the Securities and Exchange Commission (''Commission'') the proposed new rule 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 proposes to amend its rule governing the operation of its Firm Quote Rule to permit split-price executions. Below is the text of the proposed rule change. Proposed new language is *italicized*, and proposed deletions are in brackets.

* * * * *

Rule 8.51 Trading Crowd Firm Disseminated Market Quotes

(a) The classes and series which shall be subject to the requirements of this rule will be determined at the discretion of the appropriate Market Performance Committee (''MPC'').

(1) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this paragraph (a). For the purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx).

(2) The firm quote requirement shall be no less than the RAES contract limit applicable to that class of options. However, the appropriate Floor Procedure committee, in its discretion, may establish a different firm quote requirement for a particular class of options that 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 Floor Procedure Committee may establish a firm quote requirement of between 10 and 50 contracts. The firm quote requirement applies at all times other than during rotation, unless there is a contrary Floor Official ruling pursuant to subparagraph (3) of this paragraph (a). *Except as provided in sub-paragraph (3) below with respect to the price at which an order must be executed*, the firm quote requirement obligates a trading crowd to sell (buy) at lease the established number of contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is located for trading. The Exchange may establish a higher firm quote requirement, of up to 100 contracts, for the trading crowd for options on the Dow Jones Industrial Average. Except in the case of rerouted RAES orders that are eligible for the RAES kickout price in accordance with Interpretation .04 to Rule 6.8, an order ordinarily will be deemed to reach the trading station when a Floor Broker represents the order in open outcry at the trading station.

(3)(A) It is possible that the prevailing market bid or offer may be equal to the best bid or offer on the Exchange's book. In those instances, and in the event the order in the book is for a smaller number of contracts than the represented order, the balance of the represented order must be executed at no worse than the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Market Performance Committee on a class-by-class basis (the ''Book Price Commitment Quantity'') Any portion of the order remaining to be executed after the trading crowd has executed the Book Price Commitment Quantity at the disseminated best bid or offer will be required to be executed at least at (i) the price of any other order(s) in the book that then constitutes the new prevailing market bid or offer for the quantity of such order(s); or (ii) the market-maker disseminated price if that price constitutes the new prevailing market bid or offer (after the booked order(s) has been traded) for the entire remainder of the order. So long as an order in the book constitutes the new prevailing market bid or offer, any remaining balance of the order will be handled in accordance with (i) or (ii) of this paragraph, in such order.

(B) The market-maker disseminated price is the displayed price which reflects either the price established by (1) the Exchange's Autoquote system; (2) another quoting system operated by a trading crowd market-maker, including the Designated Primary Market-Maker; or (3) a verbalized quote by a member of the trading crowd.

(C) Generally, the Book Price Commitment Quantity for a particular option class will be equal to the Book Price Commitment Quantity established pursuant to paragraph (b) of Rule 6.8. However, the appropriate Market Performance Committee may determine to establish a different Book Price Commitment Quantity for any particular option class.

[(3)] *(4)* When orders for the same class (whether for the same series or different series) from the same beneficial owner are represented at the trading station at approximately the same time, then only the first of such orders that cumulatively equal or add up to less than the firm quote requirement shall be entitled to an execution pursuant to paragraph (a)(2) above.

[(4)] (*5*) On a case by case basis, any two Floor Officials may grant exemptions to or suspend the provisions of this paragraph (a) for either a class or series within a class if, in their determination, to do so is in the interest of a fair and orderly market. Additionally, any two Floor Officials may determine that an exemption to Rule 8.51(a) is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.

[(5)] (*6*) The senior person then in charge of the Exchange's Control Room shall have the authority to suspend the firm quote requirements of this paragraph (a) with respect to a class of options if a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. If this authority is invoked, the Exchange's Control Room will disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. Once the problem has been corrected and the market quotes have been updated, the suspension of the firm quote requirements of paragraph (a), shall be lifted by either the senior person then in charge of the Exchange's Control Room, or by two Floor Officials.

(b) With respect to orders (or portions of orders) at the displayed offer (bid), that are not entitled to an execution pursuant to the provisions of paragraph (a), the trading crowd is required to either.

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

[2] 17 CFR 240.19b–4.

(1) sell (buy) the number of contracts specified in the order *pursuant to the rules of execution described in paragraph (a) (2) and (3);* or

(2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.

* * * *Interpretations and Policies*

.01 With respect to subsection (a) of this Rule, if the disseminated bid (offer) is on behalf of an order represented by a Floor Broker, DPM, or OBO and is for less than the firm quote requirement applicable for that class of options, the trading crowd is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for the firm quote requirement for that class of options.

.02–.08 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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

a. *Background.* The Exchange recently filed a proposed rule change that provides that, under certain circumstances, an order that is routed to the Exchange's Retail Automatic Execution System (''RAES'') may be executed at more than one price.[3] Specifically, the Exchange proposed that RAES orders utilizing the Exchange's Automated Book Priority (''ABP'') system are executed against the book price *up to* the applicable book volume or a larger amount as pre-determined by the appropriate Floor Procedure Committee (''FPC'') for the subject option class.[4] The balance would be (i) routed to the Public Access Routing terminal (''PAR'') if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new best bid or offer; or (iii) executed against an order in the book if such order constitutes the new best bid or offer with the balance of the RAES order being assigned to participating market-makers at the new book price up to the Book Price Commitment Quantity.

b. *Proposed Change.* RAES essentially provides an automated version of the firm quote process and the same logic which suggests there should be split price executions on RAES in certain circumstances applies equally to the firm quote process for orders represented in open outcry. Consequently, the Exchange is now proposing to make a similar change to the Firm Quote Rule.

Specifically, in those instances where the Exchange's book constitutes the prevailing market bid (offer) and a marketable sell (buy) order is represented in open outcry, the represented order would be executed at the book price in an amount *equal to* the amount of the booked order establishing the best bid (offer). However, in the event the order in the book is for a smaller number of contracts than the represented order, the balance of the represented order must be executed at no worse than the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Market Performance Committee on a class-by-class basis (the ''Book Price Commitment Quantity''). Any portion of the order remaining to be executed after the trading crowd has executed the Book Price Commitment Quantity at the disseminated best bid or offer will be required to be executed at least at (i) the price of any other order(s) in the book that then equals or represents the prevailing market bid or offer for the quantity of such order; or (ii) the market-maker disseminated price[5] if that price represents the prevailing market bid or offer (after the booked order(s) has been traded) for the entire remainder of the order. So long as an order in the book equals or represents the next prevailing market bid or offer, any remaining balance of the order will be handled in accordance with (i) or (ii) of this paragraph, in such order.

The following example illustrates the application of the proposed rule: The Book Price Commitment Quantity is set at 10 contracts; there ae two sell orders resident in the book priced a $2\frac{9}{16}$ and $2\frac{5}{8}$ respectively—the first is for one contract and the second is for 5 contracts; the crowd's Autoquote market is $2\frac{1}{2}$–$2\frac{3}{4}$; and the best bid/offer on the Exchange is $2\frac{1}{2}$–$2\frac{9}{16}$ (assume no other market center has a better bid/offer); A market order to buy 50 contracts is represented in the trading crowd. The crowd's obligation with respect to this order would be as follows:

- Ten contracts must be executed at no worse than $2\frac{9}{16}$;
- The new best bid/offer is $2\frac{1}{2}$–$2\frac{5}{8}$;
- Ten contracts must be executed at no worse than $2\frac{5}{8}$;
- The new best bid/offer is $2\frac{1}{2}$–$2\frac{3}{4}$;
- The remaining 30 contracts must be executed at no worse than $3\frac{3}{4}$.

c. *Book Indicator.* When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange (*i.e.*, it is establishing the best bid or offer and not merely matching the market-maker bid or offer) and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a ''Book Indicator.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and in particular, with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices.

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.

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.

---

[3] *See* Securities Exchange Act Release No. 43430 (October 11, 2000), 65 FR 62776 (October 19, 2000) (SR–CBOE–00–21).

[4] That pre-determined contract amount, to be called the ''Book Price Commitment Quantity,'' would be determined by the FPC, and could set from zero contracts up to the maximum RAES eligible order size for that option class. Thus, if the book contains an order for one contract that represents the best bid, and the Book Price Commitment Quantity is set to 40, an incoming market order to sell 50 contracts would execute against the book for one contract and execute against the trading crowd for 39 contracts on RAES at the book price.

[5] The market-maker disseminated price is the displayed price which reflects either the price established by (1) the Exchange's Autoquote system; (2) another quoting system operated by a trading crowd market-maker, including the Designated Primary Market-Maker; or (3) a verbalized quote by a member of the trading crowd.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 publishers 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 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–00–41 and should be submitted by January 30, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–540 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43787; File No. SR–CHX–00–28]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Automatic Execution of Agency Limit Orders for Dual Trading System Issues

January 2, 2001.

I. Introduction

On September 14, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), 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 relating to automatic execution of agency limit orders for dual trading system issues. The proposed rule change was published for comment in the **Federal Register** on November 16, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CHX Rule 37(b)(6) under Article XX relating to the automatic execution of agency limit orders for dual trading system issues in the event of a trade-through. Under the proposal, a specialist would be allowed to elect, on an issue-by-issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The current rule provides that agency limit orders (that are not marketable when entered into the Exchange's MAX automatic execution system) will automatically be filled at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. Under the proposal, automatic execution of such limit orders will no longer be required. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. The obligation to fill the order at the limit price remains the same, whether executed manually or automatically. The Exchange believes that the proposed amendment reasonably anticipates the impact that the decimal pricing environment will have on the national market system, where the number of small orders executed at multiple price levels may increase the number of inadvertent trade-throughs that could otherwise lead to unwarranted automatic executions of large orders in a CHX specialist's limit order book, exposing the specialist to increased liability in a decimal pricing environment.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43530 (November 7, 2000), 65 FR 69355.

III. Discussion

The Commission has reviewed carefully the CHX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[4] and with the requirements of Section 6(b).[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to remove impediments 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. The Commission believes the proposal is reasonably designed to guard against the possible situation where the number of small orders executed on the Exchange at multiple price levels increases the number of inadvertent trade-throughs that could otherwise lead to unwarranted automatic executions of large orders in a specialist's limit order book, resulting in increased liability to CHX specialists. The Commission believes the proposal is designed to provide a safeguard as the national market system converts to a decimal pricing environment, and should result in grater stability during the transition. Furthermore, the Commission finds that the proposal is consistent with the section 6(b)(5) requirement that the Exchange's rules be designed to promote just and equitable principles of trade, because the obligation to fill orders at the limit price remains constant, regardless of whether executions are manual or automatic.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the

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

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

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).