

24A.5(e)(iii)(B) and replacing it with "20%."⁶

CBOE is also submitting as part of the proposed rule change a draft Regulatory Circular in which the SPX Floor Procedure Committee⁷ would exercise its authority under the proposed CBOE Rule 24A.5(e)(iv) to set the participation entitlement formula for AMMs.⁸ Specifically, the Regulatory Circular would state that the Submitting Member is entitled to cross up to 20% of the contracts in an order that occurs as a result of the Submitting Member's Request for Quotes ("RFQ"). The Regulatory Circular would stipulate that to receive this participation entitlement, the Submitting Member must indicate an intention to cross or act as principal with respect to the FLEX trade. The Regulatory Circular would also state that the AMM(s) is (are) entitled to the contracts remaining in the order up to an aggregate of 40% of the order, but that a Submitting Member and the AMM(s) could not receive an entitlement that collectively equals more than 40% of the order. The remaining contracts in the order would then be allocated according to the relevant Exchange rules.⁹

2. Statutory Basis

The CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers, pursuant to section 6(b)(5) of the

Exchange Act.¹⁰ The CBOE believes that, through the AMMs' obligation to respond to all RFQs, liquidity is provided to the FLEX Index Options market. In return for the obligations that are imposed on AMMs in FLEX Index Options, the CBOE believes it is just and equitable that the AMMs receive a participation entitlement, which may be up to 40% of an order.

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

The Exchange does not believe that the proposed rule change, as amended, 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 has neither solicited nor received written comments on the proposed rule change, as amended.

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, as amended, or
- (B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 number SR-CBOE-2002-09 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45640; File No. SR-CBOE-2002-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders for Lead Market-Makers and Supplemental Market-Makers Logged On to the Exchange's Rapid Opening System

March 25, 2002.

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 February 19, 2002 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. On March 18, 2002, the CBOE submitted Amendment No. 1 to the proposed rule change.³ On March 22, 2002, the CBOE submitted Amendment No. 2 to the proposed rule change.⁴ 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 amend Interpretation and Policies .01 of CBOE

¹¹ 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 Jaime Galvan, Attorney, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 15, 2002. The changes made by Amendment No. 1 have been incorporated into this notice.

⁴ See letter from Madge M. Hamilton, Attorney, CBOE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 22, 2002. The changes made by Amendment No. 2 have been incorporated into this notice.

⁶ CBOE Rule 24A.5(e)(iii)(B) currently permits a Submitting Member who has matched or improved the BBO to have priority to execute the contra side of the trade that is the subject of the Request for Quotes ("RFQ"), but only to the extent of the largest of 25% of the trade, a proportional share of the trade, \$1 million Underlying Equivalent Value, or the remaining Underlying Equivalent Value on a closing transaction valued at less than \$1 million.

⁷ The SPX Floor Procedure Committee would be the appropriate Floor Procedure Committee pursuant to proposed Rule CBOE Rule 24A.5(e)(iv) to establish the participation entitlement formula. Telephone conversation between Madge Hamilton and Jaime Galvan, Attorneys, the CBOE; and Nancy Sanow, Assistant Director, Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney-Advisor, Division, Commission, on March 4, 2002.

⁸ The Exchange states that changes to this Regulatory Circular, including changes to a participation entitlement formula, will be submitted to the Commission pursuant to section 19(b) of the Act.

⁹ The AMM(s) would not be entitled to a share in these remaining contracts unless all other participants have been satisfied. Telephone conversation between Jaime Galvan, Attorney, CBOE, and Ira Brandriss, Special Counsel, and Frank N. Genco, Attorney-Advisor, Division, Commission, March 19, 2002.

¹⁰ 15 U.S.C. 78f(b)(5).

Rule 6.2A ("Interpretation .01") relating to allocation of orders for Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") logged on to the Exchange's Rapid Opening System ("ROS").

Below is the text of the proposed rule change. Deleted language is in brackets. Proposed new language is *italicized*.

* * * * *

Chicago Board Options Exchange,
Incorporated

Rules

* * * * *

Rapid Opening System

Rule 6.2A (a) Operation

* * * * *

* * * *Interpretation and Policies:*

.01 ROS may be used by LMMs and SMMs, *appointed pursuant to Rule 8.15*, to conduct rotations in [S&P 100] options *classes* ["OEX"].

Notwithstanding paragraph (b) of this Rule, ROS contracts to trade will be assigned to the LMMs and SMMs logged onto the ROS system. In addition, subject to the review of the Board of Directors, the appropriate Committee may establish from time to time a participation entitlement formula that is applicable to the LMM who determines the formula for generating automatically updated market quotations during the trading day and provides the primary quote feed for an option class during an expiration cycle. The participation entitlement formula only applies to ROS contracts to trade and is subject to the following conditions: (i) the LMM will receive this participation right only during expiration cycles (and only with respect to time periods during those expiration cycles) when the LMM is providing the primary quote feed, and (ii) the LMM logs onto ROS the designated number of times as established by the appropriate Committee.

* * * * *

The CBOE has also submitted as part of its proposed rule change the draft text of a proposed Regulatory Circular that would establish, and further describe the application of, a participation entitlement formula for qualifying LMMs pursuant to the above proposed amendment to Interpretation .01 of Rule 6.2A. The text of this proposed Regulatory Circular is available at 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 Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. 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

CBOE is submitting the proposed change to Interpretation .01 pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,⁵ which requires that respondent options exchanges adopt new, or amend existing, rules to make express any practice or procedure "whereby market makers trading any particular option class determine by agreement * * * the allocation of orders in that option class." The proposed rule change would clarify that ROS trades will be assigned to LMMs and SMMs logged onto ROS.⁶ It would also permit the appropriate Floor Procedure Committee to establish an entitlement formula—i.e., a participation right—that is applicable to the LMM who determines the formula for generating automatically updated market quotations during the trading day and provides the primary quote feed for an option class during the current expiration month.⁷

The proposed rule change provides that this LMM's participation right would apply only to ROS contracts to trade, and would be subject to the following conditions: (1) The LMM would only receive this participation right during the time it is actually providing the primary quote feed for an option class; and (2) the LMM must log

onto ROS the minimum number of times established by the appropriate Floor Procedure Committee.

The CBOE states that the proposed rule change clarifies that ROS may be used by LMMs and SMMs appointed pursuant to CBOE Rule 8.15 to conduct rotations in options classes,⁸ and would permit LMMs and SMMs to use ROS in any options class. Interpretation .01 currently limits the use of ROS to LMMs and SMMs in S&P 100 ("OEX") Options. Thus, the proposed change would permit a wider use of ROS by LMMs and SMMs.

The proposed rule change to Interpretation .01 is also intended to clarify that despite CBOE Rule 6.2A(b)—which assigns ROS contracts to trade to participating market-makers—in crowds to which LMMs and SMMs are appointed, ROS contracts to trade will be assigned only to the LMMs and SMMs logged onto ROS.⁹ The CBOE cites the notice in which the rule change to adopt Interpretation .01 was published,¹⁰ which stated that openings in OEX options have been conducted for many years by the use of LMMs.¹¹ That notice also stated:

CBOE * * * represent[ed] that the ROS system was not meant to supplant the LMM system which has added accountability to the openings in OEX. The CBOE believes that, at the option of the appropriate CBOE Floor Procedure Committee, ROS would be used as a tool by the LMM to facilitate openings. * * * To the extent that market-makers want to participate in the opening of a series in which they do not hold LMM or SMM appointments, they will continue to be able to transmit written non-cancelable proprietary and market-makers orders to the LMM in the appropriate zone ten minutes prior to the opening of trading, pursuant to the terms of Interpretation .02 to CBOE Rule 24.13.¹²

The CBOE states that it has introduced a vendor quote program in OEX to replace the Autoquote system. The vendor system accepts a quote stream from a firm's proprietary quote system and then sends this quote information to the Trading Support System to be disseminated as market

⁵ Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

⁶ ROS is the Exchange's automated system for opening classes of options at the beginning of the trading day or for re-opening classes of options during the trading day. See CBOE Rule 6.2A.

⁷ The Exchange states that changes to this Regulatory Circular, including changes to a participation entitlement formula, will be submitted to the Commission pursuant to section 19(b) of the Exchange Act.

⁸ See Securities Exchange Act Release No. 45574 (March 15, 2002) concerning a related amendment to CBOE Rule 8.15 that was recently approved by the Commission.

⁹ Telephone conversation between Madge Hamilton and Jaime Galvan, Attorneys, CBOE, and Ira Brandriss, Special Counsel, Division, Commission, on March 21, 2002.

¹⁰ Securities Exchange Act Release No. 43666 (December 4, 2000); 65 FR 77943 (December 13, 2000) (notice of filing and immediate effectiveness of proposed rule change that permitted the implementation of ROS in S&P 100 index options).

¹¹ *Id.* at 77944.

¹² *Id.*

quotes.¹³ The CBOE believes that the LMM that provides the primary quote feed for an option class during the current expiration cycle provides a valuable service that ensures that the quotes are being updated in timely fashion to reflect the current state of the market. The LMM currently receives no participation entitlement for providing the primary quote feed for an option class, other than the entitlement it receives along with all other SMMs entitled to participate during the opening. The proposed rule change would permit the appropriate Floor Procedure Committee to establish a participation entitlement formula for the LMM providing the primary quote feed.

The CBOE is also submitting as part of the proposed rule change a draft Regulatory Circular for use by any appropriate Floor Procedure Committee to adopt the participation entitlement formula established in the circular. This Regulatory Circular establishes participation entitlements that range from 34 percent to 40 percent for the LMM providing the primary quote feed. These participation entitlements would be implemented by permitting the LMM providing the primary quote feed to log onto ROS an additional number of times as indicated in the table below:

If the total Number of appointed LMMs and SMMs is	The LMM providing the primary quote feed must log onto ROS the following Number of times	Participation right of the LMM providing the primary quote feed (percent)
3	1	34
4	2	40
5	2	34
6	3	38
7	4	40
8	4	36
9	5	38
10	6	40
11	6	38
12	7	39
13	8	40
14	8	38
15	9	39
16	10	40

The draft Regulatory Circular adds that in the event the total number of LMMs and SMMs appointed pursuant to CBOE Rule 8.15 is one, all ROS contracts to trade will be assigned to the appointed LMM or SMM. In the event the total number of LMMs and SMMs

appointed pursuant to Rule 8.15 is two, the circular states that the LMMs and/or SMMs will each be assigned an equal portion of ROS contracts.

2. Statutory Basis

The CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers, pursuant to section 6(b)(5) of the Act.¹⁴ The CBOE believes that the proposed rule change protects investors and the public interest by providing incentives to the LMMs to provide the primary quote feed. The CBOE states that the LMM that provides the primary quote feed uses its own proprietary system to provide the quotes, and, in addition, must make sure that quotes are updated in a timely fashion to reflect the current quotes in the underlying Index Options.

The proposed rule change proposes to give the LMM a limited participation entitlement during the opening of an Index Option. The CBOE believes that given the service that the LMM is performing, it is within just and equitable principles of trade to grant the limited participation entitlement that is proposed. For the reasons stated, the CBOE believes that the proposed rule change is consistent with the Act and the regulations thereunder.

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 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, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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 number SR-CBOE-2002-10 and should be submitted by April 23, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45656; File No. SR-GSCC-2002-01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Establishment of a Cross-Margining Program With BrokerTec Clearing Company, L.L.C.

March 27, 2002.

I. Introduction

On January 18, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission")

¹³ A minimum of three market-makers or market-maker groups are approved by CBOE's Index Market Performance Committee to act as LMMs and SMMs and provide a proprietary quote feed to CBOE's vendor quote system. One feed serves as the primary quote feed, and the other feeds serve as backup. In addition, Autoquote provided by RISC Systems serves as a backup.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 17 CFR 200.30-3(a)(12).