

officials to determine that another market's options quotes are unreliable is appropriately limited. Moreover, the record keeping requirements and other proposed procedures are not unreasonable.

The Commission finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 clarifies the limits on the discretion of the Exchange to disengage or operate Auto-Ex in any manner other than the normal manner and thus, raises no novel issues of regulatory concern.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 Amex. All submissions should refer to File No. SR-Amex-2001-74 and should be submitted by June 13, 2002.

V. Conclusion

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2001-74), as amended by Amendment Nos. 1, and 2, is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12897 Filed 5-22-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45934; File No. SR-CBOE-2002-09]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders for Appointed Market-Makers in Index FLEX Options

May 15, 2002.

I. Introduction

On February 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 the allocation of orders for Appointed Market-Makers ("AMMs") in Index FLEX Options. On March 18, 2002, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on April 2, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

The CBOE is proposing to amend CBOE Rule 24A.5, concerning the allocation of orders in FLEX Index Options. The proposed rule change was submitted by the CBOE pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,⁴ 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."

CBOE Rule 24A.9 provides for the appointment of Appointed Market-Makers ("AMMs") in FLEX Index Options and assigns these AMMs certain specified obligations in the

trading of such options. The proposed rule change would amend CBOE Rule 24A.5, which relates to trading procedures for FLEX Options, to permit the appropriate Floor Procedure Committee—in this case, the SPX Floor Procedure Committee—to establish a participation entitlement formula for such AMMs.

The proposed rule change would also amend the participation entitlement of a "Submitting Member," *i.e.*, the Exchange member that initiates FLEX bidding and offering by submitting a FLEX Request for Quotes ("RFQ"). Currently, a Submitting Member who has indicated an intention to cross or act as principal on a FLEX Index Options trade, and has matched or improved the best bid or offer given in response to its RFQ, is granted priority to execute the contra side of the trade—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. The proposed rule change would reduce the percentage participation entitlement, where it applies, from 25% to 20%.

As part of the proposed rule change, the CBOE submitted a draft Regulatory Circular with which the SPX Floor Procedure Committee would exercise its authority to set the participation entitlement formula for AMMs.⁵ 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 RFQ when all conditions of such percentage are met. The Regulatory Circular would state further 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 the 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.⁶

The CBOE believes that it is just and equitable for AMMs in FLEX Index Options to receive a participation entitlement in return for the obligations that are imposed upon them. The CBOE believes that such an entitlement is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45633 (March 22, 2002), 67 FR 15643 (April 2, 2002) ("Notice"). Although the Notice stated that the date of filing of Amendment No. 1 was March 18, 2002, the amendment was deemed filed on March 15, 2002.

⁴ 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).

⁵ The Exchange has stated that changes to this Regulatory Circular, including changes to the participation entitlement formula, will be submitted to the Commission pursuant to Section 19(b) of the Act. See Notice.

⁶ The CBOE has stated that AMM(s) would not be entitled to a share in these remaining contracts unless all other participants have been satisfied. See Notice.

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

important to encourage members of the Exchange to become AMMs, because FLEX Index Options are customized and do not have the same liquidity as standardized options, and AMMs are subject to greater risk when quoting such options.

III. Discussion

After careful consideration, the Commission has determined to approve the proposed rule change.⁷ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁸

The Commission believes that it is reasonable for the Exchange to offer AMMs a participation guarantee to encourage Exchange members to become AMMs and provide liquidity in FLEX Index Options. The Commission notes that the proposed entitlement of the AMM together with any guaranteed participation granted to the Submitting Member could not exceed 40 percent of an order. The Commission has found with respect to participation guarantees in other contexts that a maximum combined guarantee of 40 percent is not inconsistent with statutory standards of competition and free and open markets.⁹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2002-09) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12981 Filed 5-22-02; 8:45 am]

BILLING CODE 8010-01-P

⁷ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of an exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁹ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45935; File No. SR-CBOE-2002-08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Allocation of Orders

May 15, 2002.

I. Introduction

On February 15, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 the allocation of orders. On March 22, 2002, and March 27, 2002, the CBOE submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 8, 2002.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposal

CBOE Rule 6.45, to be retitled "Priority of Bids and Offers—Allocation of Trades," includes provisions that govern the allocation of an order on the Exchange when more than one market participant is bidding or offering at the best price to fill that order. As described below, the CBOE is proposing to amend Rule 6.45 by adding a number of provisions concerning specific aspects of the allocation process, and by clarifying how an order is to be allocated in certain situations where the rule currently is silent.

The CBOE is also proposing to amend Rule 6.45 by adding a clause that stipulates that the rule's provisions apply except as provided by certain other CBOE rules concerning the allocation of orders and the participations of various market participants. These other rules include, but are not limited to, CBOE Rule 6.2A ("Rapid Opening System"), CBOE Rule 6.8 ("RAES Operations"), CBOE Rule 6.9 ("Solicited Transactions"), CBOE Rule 6.47 ("Priority on Split Price Transactions"), CBOE Rule 6.74 ("Crossing Orders") and CBOE Rule

8.87 ("Participation Entitlement of DPMs"), as well as CBOE Regulatory Circulars approved by the Commission concerning participation rights.⁴

The proposed rule change was submitted by CBOE pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000,⁵ which requires that the 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 spreads or option prices at which they will trade any option class, or the allocation of orders in that option class."

CBOE Rule 6.45 currently requires that the highest bid or lowest offer ("best bid or offer") shall have priority. The rule also provides that, with limited exceptions set forth in 6.45(c) and (d), an order representing the best bid or offer in the customer limit order book receives priority over another order at the same best price. The proposed rule change would add CBOE Rule 6.45(a)(i) to provide that if more than one public customer order is represented in the customer limit order book at the best price, priority will be afforded to such orders in the sequence in which they were received by the OBO or DPM.

CBOE is also proposing to add CBOE Rule 6.45(a)(ii) to apply with respect to bids or offers for orders represented by a Floor Broker, a Designated Primary Market-Maker ("DPM") acting as agent under CBOE Rule 8.85(b), or an Order Book Official ("OBO"), or bids or offers made in response to a specific request from a Market-Maker. In these instances, the proposed rule change would provide that the Floor Broker, DPM, OBO, or Market-Maker will determine which market participants responded at the best market at the time the market was established. This provision would further state that the Floor Broker, DPM, OBO, or Market-Maker will determine the sequence in which bids (offers) were made, subject to the following:

(1) If there are two or more bids (offers) at the best price, and an order in the customer limit order book is not involved, priority is afforded to the

⁴ The current participation rights of Designated Primary Market-Makers ("DPMs") under CBOE rules are detailed in CBOE Regulatory Circular RG 00-193, dated December 28, 2000. See Securities Exchange Act Release No. 43750 (December 20, 2000), 65 FR 82420 (December 28, 2000).

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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45670 (March 28, 2002), 67 FR 16782 (April 8, 2002) ("Notice").