proposed amendment (SR–OPRA–2001–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3236 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45389; File No. SR–CBOE–00–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to SPX Combination Orders

February 4, 2002.

I. Introduction

On August 17, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder.[2] The CBOE amended its proposal on August 16, 2001,[3] September 27, 2001,[4] November 14, 2001,[5] and January 11, 2002.[6] As discussed more fully below, the proposal, as amended, will allow a member holding an ''SPX Combo Order'' [7] to execute and print the SPX Combo Order at the prices originally quoted within two hours after the time of the original quotes, provided that the prices originally quoted satisfy the requirements of CBOE Rule 24.20(b)(1).[8]

The proposed rule change was published for comment in the **Federal Register** on October 24, 2000.[9] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment Nos. 1, 2, 3, and 4 to the proposal.

II. Description of the Proposal

A. Revised Text of CBOE Rule 24.20

In Amendment Nos. 1, 2, 3, and 4, the CBOE proposes the following amendments to the text of proposed CBOE Rule 24.20, as published in the October Release. Additions are italicized and deletions are in [brackets].

SPX Combination Orders

Rule 24.20 (a) For purposes of this rule, the following terms shall have the following meanings:

(1) An ''SPX combination'' is [an order combining] a long SPX call and a short SPX put [of the same series, or an order combining a short SPX call and a long SPX put of the same series] *having the same expiration date and strike price.*

(2) A ''delta'' is the *positive (negative)* number of SPX combinations *that must be sold* (*bought*) [required] to establish a [delta] market neutral hedge with an SPX option position[, based on the value of the underlying S&P 500 futures contract].

(3) An ''SPX Combo Order'' is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

(b) [Notwithstanding any other rules of the Exchange, orders for SPX options executed in conjunction with SPX combination orders] *An SPX Combo Order* may be transacted in the following manner:

([i]*1*) *When* [A]a member holding an [order(s) to purchase or sell SPX options must indicate the delta of the option and] *SPX Combo Order* [must] *and* bid*ding* or offer*ing* [for each option and each of the legs of a combination order(s)] *in a multiple of the minimum increment* on the basis of [the] *a* total debit or credit *for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed on the SPX limit order book or by the displayed quotes of the crowd, then the order may be executed at the best net debit or credit so long as* [At the time they are originally quoted, the prices quoted for the options and each leg of the combination order(s) must be such that none] *(A) no leg of the order* would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX [customer] limit order book *and (B) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.*

([ii]*2*) [The option order(s) and each leg of the combination order(s) may be executed immediately or at any time during the trading day. If the orders are not executed immediately, the option order(s) and each leg of the combination order(s) may be printed at their originally quoted prices in order to achieve the total debit or credit agreed to for the entire transaction.] *Notwithstanding any other rules of the Exchange, if an SPX Combo Order is not executed immediately, the SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within 2*

---

[9] 17 CFR 200.30–3(a)(29).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation (''Division''), Commission, dated August 14, 2001 (''Amendment No. 1''). Amendment No. 1 revises the text of CBOE Rule 24.20, ''SPX Combination Orders,'' to define the term ''SPX Combo Order'' and to indicate that, as long as the conditions in CBOE Rule 24.20 are satisfied, an SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within two hours after the time of original quotes, rather than at any time during the trading day, as the proposal had originally provided. Amendment No. 1 also provides additional information concerning the need for the proposed rule.

[4] *See* letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated September 26, 2001 (''Amendment No. 2''). Amendment No. 2 revises the text of CBOE Rule 24.20 to make the numbering of paragraph 24.20(b) consistent with the numbering of paragraph 24.20(a) and to indicate that SPX Combo Orders may be executed and printed at the originally quoted prices, rather than printed and executed at the originally quoted prices.

[5] *See* letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated November 13, 2001 (''Amendment No. 3''). Amendment No. 3 revises CBOE Rule 24.20(b)(1) to provide that when a member holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total net debit or credit has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes in the crowd, the order may be executed at the best net debit or credit so long as: (1) no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids of offers in the SPX limit order book; and (2) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.

[6] *See* letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated January 10, 2002 (''Amendment No. 4''). Amendment No. 4 revises the text of proposed CBOE Rule 24.20(a) to: (1) define an ''SPX combination'' as a long SPX call and a short SPX put having the same expiration date and strike price; (2) define ''delta'' as the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position; and (3) indicate that an ''SPX Combo Order'' is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

[7] The proposal defines an ''SPX Combo Order'' as an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta. *See* Amendment No. 4, *supra* note 6.

[8] Telephone conversation between Jaime Galvan, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 28, 2001.

[9] *See* Securities Exchange Act Release No. 43452 (October 17, 2000), 65 FR 63658 (''October Release'').

hours after the time of the original quotes.

B. Amendment No. 1

In Amendment No. 1 the CBOE revises the text of CBOE Rule 24.20 to, among other things, add a definition of ''SPX Combo Order'' and to provide that an SPX Combo Order that is not executed immediately may be executed at the prices originally quoted for each of the component option series within two hours after the time of the original quotes. In addition, Amendment No. 1 provides information concerning the need for the proposed rule. In this regard, Amendment No. 1 states that when SPX traders and customers trade SPX options, they hedge their underlying risk with either S&P 500 Index futures contracts traded at the Chicago Mercantile Exchange (''CME'') or with SPX call and put options traded as combinations.[10] An options position can be hedged by trading the number of combos equivalent to the delta [11] of the particular option multiplied by the number of options in the transaction.[12]

The CBOE notes that an SPX trader or customer hedging an SPX options position with S&P 500 Index futures must execute two separate trades in two separate markets, first trading SPX options at the CBOE, then submitting an order to the CME to trade the appropriate number of S&P 500 Index futures to hedge the SPX options trade. According to the CBOE, traders and customers prefer not to hedge SPX options by using S&P 500 Index futures because of the execution risk involved in trading in two separate markets. Specifically, the trader or customer is exposed to the risk of the S&P 500 Index moving significantly before the hedging futures transaction can be executed.[13]

The CBOE states that SPX traders and customers prefer to hedge an SPX options position with SPX combinations because all of the required transactions can be effected as a package in one market, the CBOE. Hedging SPX options with SPX combinations avoids the execution risk and the increased costs involved in trading in the futures market. In addition, the CBOE notes that SPX traders and customers prefer to use SPX combinations because an options order can be ''tied'' to a particular level of the S&P 500 Index to establish the hedge price.[14] The CBOE states that when SPX options are tied to SPX combinations, the underlying hedge level of the S&P 500 Index is established and traders and customers can determine the exact implied volatilities of their options trades.[15] According to the CBOE, hedging SPX options with SPX combinations acts as an incentive to market makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, the CBOE maintains that customers who trade SPX options tied to SPX combinations enjoy tighter and more liquid markets.

According to the CBOE, certain market activity occurs occasionally that makes it difficult to effect these types of trades. The CBOE notes that an order may not trade immediately if, for example, the customer submitting the order wants to show the order to other market participants to improve the initial quote received or a member firm needs time to locate a customer that it believes might like to participate in the trade. In a volatile market, the S&P 500 Index can move substantially in one direction so that the originally quoted prices for the SPX options and the SPX combinations are no longer within the current market quotes. In such market conditions, the parties are unable to consummate the trade because CBOE rules preclude trading the legs of a combination outside of the currently displayed market quotes (''out-of-range'').

The purpose of CBOE Rule 24.20 is to permit the trading of out-of-range SPX Combo Orders under certain conditions. If the SPX Combo Order is not traded immediately, CBOE Rule 24.20(b)(2) would permit the SPX Combo Order to be executed and printed outside of the current market quotes at the originally quoted prices within two hours after the time of the original quotes, provided that the originally quoted prices for the SPX Combo Order comply with the requirements of CBOE Rule 24.20(b)(1).

The CBOE believes that the two-hour time window is necessary to provide SPX traders and customers with sufficient relief from the requirement to trade at or within the current market quotes when they attempt to trade SPX Combo Orders in a volatile market. The CBOE states that when SPX Combo Orders do not trade immediately, market conditions later may change so that the parties become willing to consummate the trade as originally designed.[16]

[10] CBOE Rule 6.53(e) defines a combination order as an order involving a number of call option contracts and the same number of put option contracts in the same underlying security. A combination (''combination'' or ''combo'') is a long combo when it combines a long call and a short put of the same series, and it is a short combo when it combines a short call and a long put of the same series.

[11] The delta is the number of SPX combinations required to establish a market neutral hedge with an SPX option contract based on the value of the underlying S&P 500 Index futures contract. *See* CBOE Rule 24.20(a)(2).

[12] For example, a customer that purchases 100 SPX calls that have a delta of ''30'' (expressed as 30% or .30) may hedge against a downward movement in the S&P 500 Index by either selling S&P 500 Index futures on the CME or by trading short combos. If combos are used to hedge, the customer will need to trade 30 short combos (.30 x 100). The appropriate ratio of combos in this example is to sell 30 SPX calls and buy 30 SPX puts with the same strike price and expiration date. If futures are used to hedge, the customer will need to sell 12 S&P 500 Index futures on the CME ((.30 x 100)/2.5 = 12), where 2.5 is the multiplier used to convert SPX options positions to the equivalent S&P 500 Index futures position (one S&P 500 Index future equals 2.5 SPX combos).

[13] Using the example in footnote 11, suppose the customer completes the purchase of the 100 SPX calls but the S&P 500 Index declines sharply before the customer can trade the futures. As a result of the market declines, the customer must sell the futures at a much lower price to complete the hedge.

[14] Again using the example in footnote 11, the customer will request a market from a market maker for the calls that the customer wishes to purchase based on a specified underlying level of the S&P 500 Index. The customer specifies an underlying level of the S&P 500 Index to allow the market maker to determine the delta (in this case 30) and a theoretical value for the calls. The market maker will then give his or her market for the 30 delta calls and for the component call and put options that will make up the combos. The combos portion of the order is equivalent to an order to trade futures at the underlying value of the S&P 500 Index that has been specified by the parties. The prices quoted for the call and put option components of the combos establish the hedge price for the transaction. When the foregoing occurs, SPX traders and customers say that the calls have been ''tied'' to combos.

[15] Implied volatility is the volatility percentage that justifies an option's price. When the customer and the market maker establish the underlying hedge level of the S&P 500 Index and a market price for the calls, the market maker and the customer are able to use option pricing models to determine the implied volatility of the calls. The CBOE states that knowing the implied volatility that is being quoted in the market is useful to customers and traders because customers and traders frequently take positions in the market based on the implied volatility level.

[16] According to the CBOE, an example of such market action in the S&P 500 Index occurred on March 22, 2001. The S&P 500 Index traded as low as 1081.19 as late as 1:50 p.m. From that point, the market rallied about 40 points to a high of 1121.43 through the end of the trading day and never went below 1088.73 after 2 p.m. or below 1101.11 after 2:40 p.m. Had a customer entered an order options tied to combos at an S&P 500 Index equivalent of 1082 at 1:45 p.m., the order could not have been filled during the ensuing rally because the original quoted prices of the options would trade out-of-range of the current market quotes. The customer might have been unable or unwilling to change his or her prices. Additionally, the order flow that accompanies a 40-point rally in the S&P 500 Index will often enable the market maker to provide the liquidity necessary to fill the customer's order. The proposed rule would enable the parties in this scenario to trade the order for options tied to combos as the 1082 S&P 500 Index level at any time before the end of the trading day (because the order came in with 1½ hours left in the trading day, and assuming a two-hour time window), notwithstanding the fact that the market rally had taken the originally quoted prices out-of-range.

Although the CBOE believes that CBOE Rule 24.20 will result in an increase in the number of SPX Combo Orders, the CBOE does not believe that the number of trades reported out-of-range will be significant. The CBOE believes that CBOE Rule 24.20 will not be used very often because the relief provided by the rule normally would be required only during times of market volatility. On trading days during which the S&P 500 Index moves very little, it is unlikely that members would need to invoke CBOE Rule 24.20. The CBOE believes that SPX traders will use CBOE Rule 24.20 to accommodate large orders of primarily institutional customers.

The CBOE notes that orders for the component series of an SPX Combo Order will be price reported to the trading floor and to the Options Price Reporting Authority (''OPRA'') using an indicator. When orders are traded out-of-range pursuant to CBOE Rule 24.20, the indicator attached to the reported prices will be notice to the public that the reported prices were part of an out-of-range combo trade. Therefore, the CBOE believes that price discovery should not be adversely affected by the operation of CBOE Rule 24.20.

The CBOE believes that proposed CBOE Rule 24.20 will enable the CBOE to better compete with futures exchanges such as the CME, which has a rule that permits options spreads and combinations to trade at prices outside the current market quotes.[17] The CBOE states that it will issue a regulatory circular to its membership to explain the operation of CBOE Rule 24.20. In the regulatory circular, the CBOE will remind its membership that the adoption of CBOE Rule 24.20 does not lessen the obligation of members to obtain best execution of options orders for their customers.

C. Amendment No. 2

Amendment No. 2 revises the text of CBOE Rule 24.20 to provide consistent numbering in paragraphs (a) and (b) and to indicate that SPX Combo Orders may be executed and printed at the originally quoted prices, rather than printed and executed at the originally quoted prices.

D. Amendment No. 3

In Amendment No. 3, the CBOE clarifies that CBOE Rule 24.20 is an exception to paragraph (e) of CBOE Rule 6.45, ''Priority of Bids and Offers,'' CBOE Rule 6.46, ''Transactions Outside Book's Last Quoted Range,'' and any other applicable CBOE rules when an SPX Combo Order is transacted out-of-range pursuant to CBOE Rule 24.20. In addition, Amendment No. 3 revises CBOE Rule 24.20(b)(1) to state the priority requirement for SPX Combo Orders in the same manner as CBOE Rule 6.45(e).[18] Specifically, CBOE Rule 24.20(b)(1) provides that when a member holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total net debit or credit has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes in the crowd, the order may be executed at the best net debit or credit so long as: (1) No leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX limit order book; and (2) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.

In Amendment No. 3, the CBOE maintains that SPX Combo Orders should be given priority over orders in the SPX limit order book for several reasons. First, the CBOE notes that SPX traders will continue to be required under CBOE Rule 24.20(b)(1) to check the limit order book when an order is first entered and before trading the order. Second, the CBOE states that CBOE Rule 24.20 would likely be used only during times of market volatility to provide liquidity to large orders of primarily institutional customers. The CBOE believes that the benefit of accommodating these large customer orders outweighs any disadvantage to customer orders that could be placed into the limit order book after an SPX Combo Order has been represented and quoted. Third, the CBOE notes that each component leg of an SPX Combo Order will be price reported to the trading floor and OPRA using an indicator that will act as notice to the public that the reported prices are part of an SPX Combo Order.

E. Amendment No. 4

Amendment No. 4 revises the text of proposed CBOE Rule 24.20(a) to: (1) Define an ''SPX combination'' as a long SPX call and a short SPX put having the same expiration date and strike price; (2) define ''delta'' as the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position; and (3) indicate that an ''SPX Combo Order'' is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5)[19] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.[20] Specifically, the Commission believes that the proposal will contribute to the maintenance of a fair and orderly market by helping market participants to execute SPX Combo Orders during times of market volatility. According to the CBOE, market participants prefer to use SPX combinations, rather than S&P 500 Index futures, to hedge positions in SPX options to avoid the increased cost and execution risk associated with trading in the futures market.[21] However, the CBOE maintains that in a volatile market the originally quoted prices for an SPX Combo Order may be out-of-range by the time the parties to a trade are prepared to complete the transaction.[22] CBOE Rule 24.20(b)(2) is designed to address this issue by permitting members to execute out-of-range SPX Combo Orders at the originally quoted prices within two hours after the time of the original quotes.

The Commission believes that CBOE Rule 24.20(b)(2) should facilitate transactions in SPX Combo Orders while limiting the out-of-range transactions that may occur. In this regard, the Commission notes that CBOE

[17] *See* CME Rule 542.

[18] CBOE Rule 6.45(e) provides a limited exception from the normal time and price priority rules for spread, straddle, and combination orders. Specifically, CBOE Rule 6.45(e) states that when a member holding a spread, straddle, or combination order and bidding or offering in a multiple of the minimum increment on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the customer limit order book or announced by members in the trading crowd, then the order may be executed as a spread, straddle, or combination at the total debit or credit with one other member without giving priority to bids or offers of members in the trading crowd that are not better than the bids or offers comprising such total debit or credit and bids and offers in the customer limit order book provided at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the book.

[19] 15 U.S.C. 78f(b)(5).

[20] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* Amendment No. 1, *supra* note 3.

[22] *See* Amendment No. 1, *supra* note 3.

Rule 24.20(b)(2) provides a member with a limited amount of time, two hours from the time of the originally quoted prices, within which to execute the SPX Combo Order. In addition, the prices originally quoted for the SPX Combo Order must satisfy the requirements of CBOE Rule 24.20(b)(1), which provides, among other things, that the order must be quoted so that no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX limit order book.[23] The Commission believes that CBOE Rule 24.20(b)(2) will provide market participants with flexibility to execute SPX Combo Orders and may help market participants to hedge positions in SPX options during times of market volatility.

The Commission finds that CBOE Rule 24.20(b)(1) clarifies the procedures that a member holding an SPX Combo Order must follow. The procedures specified in CBOE Rule 24.20(b)(1) are the same as the procedures set forth in CBOE Rule 6.45(e) and, accordingly, do not raise new regulatory issues.[24]

Each component series of an out-of-range SPX Combo Order will be price reported to the CBOE's trading floor and to OPRA with an indicator that will provide notice to the public that the reported prices were part of an out-of-range SPX Combo Order trade. The Commission believes that the indicator should help to avoid investor confusion regarding out-of-range SPX Combo Order trades and minimize any negative impact on price discovery. In addition, the indicator should help the CBOE to monitor the trading of SPX Combo Orders.

The Commission believes that that the CBOE has adopted surveillance procedures that are adequate to monitor compliance with the requirements of CBOE Rule 24.20.

Finally, the Commission notes that in its regulatory circular to members explaining the operation of CBOE Rule 24.20, the CBOE will remind its members that the adoption of CBOE Rule 24.20 does not diminish the obligation of CBOE members to obtain best execution for their customers.[25]

Accelerated Approval of Amendment Nos. 1, 2, 3, and 4

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 strengthens the CBOE's proposal by limiting the time for executing an out-of-range SPX Combo Order to two hours after the time of the original quotes. Amendment No. 2 clarifies the CBOE's proposal by providing consistent numbering in paragraphs (a) and (b) of CBOE Rule 24.20. Amendment No. 3 strengthens the CBOE's proposal by adopting the requirements in CBOE Rule 24.20(b)(1) for members holding SPX Combo Orders. Amendment No. 4 strengthens the proposal by clarifying the definitions of ''SPX combination,'' ''delta,'' and ''SPX Combo Order.'' Accordingly, the Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[26] to approve Amendment Nos. 1, 2, 3, and 4 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, 3, and 4, including whether Amendment Nos. 1, 2, 3, and 4 are 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 number SR-CBOE–00–40 and should be submitted by March 4, 2002.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–00–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3231 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45364; File No. SR–MSRB–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Transactions With Sophisticated Municipal Market Professionals

January 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''the Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 25, 2002, the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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

Interpretive Notice Regarding Sophisticated Municipal Market Professionals IntroductionIndustry participants have suggested that the MSRB's fair practice rules should allow dealers[3] to recognize the different capabilities of certain institutional customers as well as the varied types of dealer-customer relationships. Prior MSRB interpretations reflect that the nature of the dealer's counter-party should be considered when determining the specific actions a dealer must undertake to meet its duty to deal fairly. The MSRB believes that dealers may consider the nature of the institutional customer in determining what specific actions are necessary to meet the fair practice standards for a particular transaction. This interpretive notice

[23] Telephone conversation between Jaime Galvan, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 28, 2001.

[24] In addition, CBOE Rule 24.19, ''OEX-SPX Spread Orders,'' contains similar requirements for members holding OEX-SPX spread orders.

[25] *See* Amendment No. 1, *supra* note 3.

[26] 15 U.S.C. 78f(b)(5) and 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19–4.

[3] The term ''dealer'' is used in this notice as shorthand for ''broker,'' ''dealer'' or ''municipal securities dealer,'' as those terms are defined in the Act. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.