

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44683; File No. SR-CBOE-2001-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Display of Indicative Spread Prices

August 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on July 19, 2001, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 CBOE. On July 20, 2001, the CBOE submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, has been filed by the CBOE as a "non-controversial" rule change under Rule 19b-4(f)(6)⁴ under the Act. 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 adopt a new interpretation to CBOE Rule 8.7. Below is the text of the proposed rule change. Proposed new language is *italicized*.

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.10 Market-Makers may display indicative spread prices on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise. Such indicative prices shall not be regarded as firm quotes, and a Market-Maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market.

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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, as amended, 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 CBOE 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

The CBOE states that a spread order is an order to buy a stated number of option contracts and to sell a stated number of option contracts of the same class of options. The CBOE represents that there are various types of spread transactions. For example, a typical calendar spread order would be to buy ten March call options and to sell ten June call options of the same class. The CBOE states that spread transactions can be used by investors in a number of trading strategies.

The CBOE represents that market-makers at the Exchange are often willing to execute a spread transaction at a net price that is better than the aggregate price of executing each leg of the spread separately. However, the CBOE states that there is currently no systematic means by which market-makers can communicate their willingness to execute spread transactions at favorable prices to investors who might be interested in such spread transactions. By adopting the proposed Interpretation, the CBOE intends to encourage market-makers to post indicative prices for spreads on the websites of member organizations through a system licensed from a third party, developed by the Exchange or otherwise.

Initially, the CBOE represents that it intends to license the software for such a system (called the "iSpreads System") from a third party. The CBOE states that it may later develop its own proprietary software to operate such a system. The CBOE states that it will make this system available to all CBOE market-makers on its trading floor. CBOE members and member firms who wish to use the system from off the trading floor may do so by obtaining their own license from the third party. Use of this

system is not mandatory; a market-maker is not required to post indicative spread prices at all, and, if he chooses to do so, he is free to use some mechanism other than the system being made available by the Exchange.

The CBOE states that market-makers who choose to use the iSpreads System can post indicative spread prices for selected options classes on the websites of participating member organizations. Depending on how the member organization wishes to use the system, a customer either can search directly on the firm's publicly accessible website to find indicative prices for the particular spread in which he is interested, or he can contact his broker at the firm and ask the broker to conduct the search on an internal site accessible to the firm. Customer orders would be sent to the CBOE market for execution in accordance with current practices, by being phoned into a member firm's order desk or transmitted via an electronic order routing system. Once a spread order has been transmitted to the Exchange, it will be executed in accordance with the Exchange's current trading rules. No special allocation rules or priority rules are being created.

The CBOE states that the iSpreads System should provide significant benefits to customers. The CBOE represents that it will provide improved information about spread prices and help customers get their spread orders executed at a price that is better than executing each leg of the spread separately.

The proposed Interpretation also provides that the indicative spread prices shall not be regarded as firm quotes, and a market-maker shall not be obligated to execute at the indicative prices spread orders that are entered into the market. The Exchange believes that attempting to obligate a market-maker to execute a spread order at the posted indicative price would create a disincentive to his use of the system. The proposed Interpretation makes it clear to all market participants that the indicative spread prices are not firm quotes and may not be available when an order is sent to the Exchange for execution. A similar disclaimer will be posted on the websites of member firms displaying the indicative spread prices.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6 of the Act⁵ in general, and with Section 6(b)(5) of the Act⁶ specifically, because it is designated to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Nancy Nielsen, First Vice President & Deputy General Counsel, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 18, 2001 ("Amendment No. 1"). In Amendment No. 1, the CBOE corrected its original filing to include a request for the Commission to waive the five-business-day pre-filing requirement and the 30-day delay in the operative date of the proposed rule change under Rule 19b-4(f)(6) under the Act. See 17 CFR 240.19b-4(f)(6).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. In particular, the CBOE states that the proposed Interpretation is intended to benefit customers by providing them with improved information about spread prices. The CBOE states that the proposed Interpretation is also intended to help customers get their spread orders executed at a better price than executing each leg of the spread order separately.

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

The CBOE does not believe that the proposed rule change, as amended, will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE seeks to have the proposed rule

change, as amended, become operative immediately.⁹

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of July 19, 2001.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior the date of filing of the proposed rule change. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change, as amended.¹¹

The Commission has determined to waive the five-business-day pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹²

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 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-2001-41 and should be submitted by September 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-20769 Filed 8-16-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44673; File No. SR-NYSE-2001-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 46

August 9, 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 June 28, 2001, the New York Stock Exchange, Inc. ("NYSE" 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 August 8, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 proposed rule change consists of amendments of NYSE Rule 46 to create Executive Floor Official and Senior Floor Official positions. It also makes housekeeping changes to other rules and policies to enable Executive Floor Officials and Senior Floor Officials to perform Floor Governor functions.

¹³ 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 James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 8, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected rule text for NYSE Rules 79A and 123A to reflect current rule text.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ See *supra* note 3.

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ See *supra* note 3.

¹² See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).