

10. If and to the extent Rule 6e-2 and Rule 6e-3(T) are amended, or Rule 6e-3 under the Act is adopted, to provide exemptive relief from any provision of the Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then NSAT and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and proposed Rule 6e-3, as adopted, to the extent applicable.

11. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in NSAT.

12. NSAT and its respective series will not accept a purchase from a Qualified Plan or a Qualified Plan participant shareholder if such purchase would make the shareholder an owner of 10% or more of the shares of any series of NSAT, unless such Qualified Plan executes a participation agreement including the conditions of the Application set forth herein, to the extent applicable. A qualified Plan or Qualified Plan participant will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any series of NSAT.

## Conclusion

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 00-22113 Filed 8-29-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43196; File No. SR-CBOE-00-38]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Documentation of Actions Taken With Respect to its Retail Automatic Execution System.

August 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 11, 2000, the Chicago Board Options Exchange, Incorporated ("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 CBOE. 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 codify its current practice of documenting the reasons for certain actions taken by Exchange officials with respect to its operation of the Retail Automatic Execution System ("RAES"). The Exchange has filed the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule.<sup>3</sup>

The text of the proposed rule change is available at the CBOE and 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 CBOE 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 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

The purpose of the proposed rule change is to add an Interpretation to Exchange Rule 6.8, RAES Operations ("RAES Rule"), in order to codify the Exchange's existing practice of documenting the reasons for actions taken by Exchange officials that result either in the deactivation of RAES or in the operation of RAES in other than the normal manner ("RAES Action" or "RAES Actions").

#### Background

The RAES Rule details the operation of the Exchange's RAES system, including which orders are eligible for execution on RAES; how eligible order size is determined; how execution price is determined; how market-makers are assigned to RAES trades; when otherwise eligible orders are rejected from RAES for manual handling; and under what circumstances RAES may be disengaged. Furthermore, Exchange Rule 6.6, Unusual Market Conditions ("Fast Market Rule"), provides authority for deactivating RAES and for deactivating the feature of RAES that causes RAES orders to be rejected and rerouted for manual execution ("RAES Reject Feature"). The CBOE represents that the provisions of the RAES Rule and the Fast Market Rule present members and investors with a clear description of: (1) Exactly how an order may be handled by the RAES system; and (2) the circumstances under which RAES Deactivation or Non-Normal Operation Action may be taken.

#### Current Documentation Procedures

The CBOE represents that it has long employed procedures for ensuring that a RAES Action is taken pursuant to authority under Exchange rules. One such procedure, required in connection with all such RAES Actions, is the documentation of the reasons for any RAES Action taken. The Exchange represents that it has required reasons for each such RAES Action taken to be recorded in a Control Room log. The log contains, among other information, a description of the RAES Action; an annotation as to the time of the RAES Action; a list of option classes affected by the particular RAES Action; and a brief summary of the reasons for each RAES Action.<sup>4</sup>

<sup>4</sup> In a telephone conversation between Tim Thompson, Assistant General Counsel, CBOE, and Steven G. Johnston, Special Counsel, Division of Market Regulation, Commission, August 16, 2000, the Exchange clarified various aspects of the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

The CBOE also represents that it employs a number of methods for notifying Exchange members and the public about any RAES Actions. These methods include making an announcement over the trading floor public address system; generating a printer message and sending it to the floor operations of member firms; and attaching an "F" indicator (indicating that a "fast market" has been declared) to price and quote information for affected option classes. In short, the Exchange represents that the provisions of the CBOE rules regarding the operation of RAES and the procedures for ensuring proper application of the rules and methods employed to notify members and the public of a RAES Action indicate that the Exchange is dedicated to ensuring that both members and investors are well informed about the operation of RAES and the circumstances under which RAES may be unavailable.<sup>5</sup>

#### Proposed Rule

The CBOE is now proposing to add an Interpretation .08 to the RAES Rule. This change would codify the Exchange's current practice of documenting the reasons for taking any RAES Action. The following rules provide specific authority for taking such Action:

**Fast Market Rule.** CBOE Rule 6.6(a) states that "[w]henver in the judgment of two Floor Officials, because of an influx of orders or other unusual conditions or circumstances, the interest of a fair and orderly market so require, those Floor Officials may declare the market in one or more options classes to be 'fast'." The Fast Market Rule further provides that if a market is declared fast, any two Floor Officials have authority to take various actions with respect to the class or classes of options declared to be in a fast market. These actions include, but are not limited to, turning off RAES in the applicable class or classes.

**Temporary Deactivation of RAES by Post Director or Order Book Official.** Rule 6.6(e) provides that a Post Director at a trading station (in the case of a Designated Primary Market maker ("DPM") crowd) or an order Book Official ("OBO") at a trading station (in the case of a non-DPM trading crowd) may turn off RAES for a class or classes of option contracts traded at that station for a period of time not to exceed five minutes if, because of an influx of orders or unusual conditions or circumstances in respect of such options

or their underlying securities, the Post Director or OBO determines that such action is appropriate in the interest of maintaining a fair and orderly market.

**Automatic Deactivation of RAES Due to News Announcements.** Rule 6.6, Interpretation .01, codifies the Exchange's implementation of an automatic system that monitors news announcements ("Monitoring System") pertaining to underlying stocks. Monitoring commences shortly before the close of trading in the primary markets for underlying stocks and continues as long as stock options continue to be traded. RAES executions are suspended in a particular class of stock options wherever the Monitoring System discovers that a news announcement has been made pertaining to the underlying stock. Two Floor Officials, who are immediately notified of the action, must consider whether to resume normal operation of RAES in the particular option class.

**Deactivation of RAES by Control Room Due to Systems Malfunction.** Under CBOE Rule 6.8, Interpretation .03, the senior person in charge of the Exchange's Control Room has authority to turn off RAES for a class of options if a system malfunction affects the Exchange's ability to disseminate or update market quotes.

**Change in Eligible RAES Order Size.** Under CBOE Rule 6.8, Interpretation .05, the Chairman of the appropriate Floor Procedure Committee or the Chairman's designee has the authority to increase the size of orders in one or more classes of options when the Chairman or his designee believes that such action is in the interest of alleviating a potential backlog of unexecuted orders.<sup>6</sup>

**Switching Off "RAES Reject Feature" Due to Fast Market.** CBOE Rule 6.8, Interpretation .02, provides that the "RAES Reject Feature" may be switched off for a particular class of options in circumstances where a fast market in the options class has been declared.

**Switching Off "RAES Reject Feature" When Comparable Conditions Exist in Other Markets.** Rule 6.8, Interpretation .02 provides that the "RAES Reject Feature" may be switched off where conditions comparable to a fast market exist in another market such that firm quote requirements do not apply.

The CBOE represents that whenever a RAES Action is taken pursuant to one of the rules above—whether by Floor Officials, through the operation of the Monitoring System, or by the senior person in the Exchange's Control Room—the RAES Action and the reasons therefore are recorded in the Control Room log. The CBOE rules may stipulate that a RAES Action be taken, e.g., in the case of news announcements pertaining to underlying stocks. Other RAES Actions, however, are at the discretion of Floor Officials. The Exchange represents that Floor Officials may, for example, take a RAES Action when quotes disseminated by CBOE are inaccurate (this infrequently may occur due to problems with automatic price quotation systems or because of inaccurate underlying market quotes); the spread in an underlying security's quotation suddenly widens; an underlying quote becomes inverted; or there are extreme disparities between quotes disseminated by various exchanges.<sup>7</sup>

The proposed rule would codify the Exchange's requirement that reasons for taking any RAES Action be documented. The Exchange represents that such Action includes deactivating RAES or switching off the "RAES Reject Feature"; changing the parameters of the eligible RAES order size; or otherwise operating RAES in other than the normal manner. The proposed rule would ensure that the Control Room log contains a historical record of the time any RAES Actions was taken, as well as the circumstances under which it was taken. The Exchange represents, therefore, that the proposed rule change is consistent with, and furthers the objectives of section 6(b)(5) of the Act<sup>8</sup> in that it is designed to remove impediments to a free and open market and protect investors and the public interest.<sup>9</sup>

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

The CBOE represents that it does not believe 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

No written comments were solicited or received with respect to the proposed rule change.

proposed rule change ("Telephone conversation with the CBOE").

<sup>5</sup> Telephone conversation with CBOE.

<sup>6</sup> The Exchange has also filed a proposed rule change, with the Commission, (SR-CBOE-00-10), that would permit the Chairman or his designee to decrease the eligible RAES size in circumstances that the Exchange deems appropriate. The proposed rule change was published for public comment in Securities Exchange Act Release No. 428262 (May 30, 2000), 65 FR 36481 (June 8, 2000).

<sup>7</sup> Telephone conversation with the CBOE.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Telephone conversation with the CBOE.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i)<sup>10</sup> of the Act and Rule 19b-4(f)(1) thereunder.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 Section. 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-00-38 in the caption above and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-22169 Filed 8-29-00; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43199; File No. SR-CHX-00-20]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders for Nasdaq/NM Securities and Amendment No. 1 Thereto

August 23, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice hereby is given that on June 9, 2000, the Chicago Stock Exchange, Incorporated ("CHX" 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 August 16, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities on the Exchange. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The text of the proposed rule change is available at the Exchange 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 and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the

places specifies in Item IV below. The Exchange has prepared summaries, set forth in Section A, B and C below, of the most significant aspects of such statements.

#### 2. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The proposed amendments are intended to bring the Exchange's rules in line with the patterns and practices that currently exist in other markets with respect to the trading of Nasdaq/NM Securities.<sup>4</sup>

Article XX, Rule 37, describes among other things, the circumstances under which orders must be accepted and guaranteed an execution at the national best or offer (the "BEST Rule"). Rule 37 also describes a specialist's ability to set a parameter (the auto-execution threshold) that identifies which of the orders guaranteed a fill under the BEST Rule will be automatically, not manually, executed. The proposed rule change would allow specialists to reduce the minimum auto-execution threshold from 1000 shares to 300 shares, but would not change specialists' obligations under the Best Rule.<sup>5</sup> In other words, specialists could choose to *automatically* execute only those orders of 300 shares or less, but would still be required to guarantee executions at the national best bid or offer ("NBBO") for orders up to an including 1,000 shares. The amended rule also would permit specialists to choose to provide an enhanced execution guarantee to orders above 3000 shares by setting a new parameter called an "enhanced liquidity quantity." Orders then would be automatically filled up to this enhanced liquidity quantity.<sup>6</sup>

The rule change also would provide new guidelines for Nasdaq/NM specialists seeking to switch from

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19n-4.

<sup>3</sup> See Letter from Paul O'Kelly, Executive Vice President, CHX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000. ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified how specialists would utilize the proposed enhanced liquidity function, and deleted a portion of the proposed rule text that would have permitted a specialist to switch to manual execution mode in unusual trading situations after, among other things, seeking relief from a member of the Exchange. Under the amended version of the rule, a specialist must seek relief from two floor officials.

<sup>4</sup> See NASD Notices to Members 99-11 and 99-12 (February, 1999) (discussing NASD member firm order execution practices, particularly during periods of significant market volatility).

<sup>5</sup> The CHX represents that reduction of the minimum auto-execution threshold is intended to limit the exposure of Nasdaq/NM specialists in the case of Nasdaq/NM Securities. The Exchange anticipates, however, that for the majority of Nasdaq/NM Securities, specialists will voluntarily remain at the 1000-share auto-execution threshold.

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

<sup>12</sup> 17 CFR 200.30-3(a)(12).