

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 filings will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-2003-54 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48324; File No. SR-CBOE-2003-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

August 12, 2003.

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 July 7, 2003, 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 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 CBOE proposes to amend CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The text of the proposed rule change is set forth below.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)–(b) No change.

(c) Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book

Market participants, as defined in Rule 6.45A(a)(i), may submit quotes or orders electronically to trade with orders in the electronic book. A floor broker market participant may only represent as agent customer orders or orders from unaffiliated broker-dealers. When a market participant's quote or order interacts with the order in the book, a trade occurs, CBOE will disseminate a last sale report, and the size of the book order will be decremented to reflect the execution. Allocation of the book order shall be as follows:

(i)–(iv) No change.

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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 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

CBOE Rule 6.45A(c) governs the interaction of market participants' quotes/orders with orders in the electronic book.³ In short, under the rule, multiple market participants submitting orders to access the book within a period of time not to exceed N-seconds (the "N-second group") are entitled to receive an allocation of the book order pursuant to an allocation algorithm.⁴ CBOE Rule 6.45A(c) limits the orders that floor brokers may represent as agent to customer orders. In adopting this restriction, the Exchange recognized that allowing floor brokers to represent certain broker-dealer orders

could raise issues under section 11(a) of the Act.⁵

The Exchange proposes to delete this restrictive language from the text of CBOE Rule 6.45A and instead allow floor brokers to represent as agent broker-dealer orders from unaffiliated parties (in addition to customer orders) as part of the N-second group. By limiting floor brokers' representation of broker-dealer orders to non-affiliated entities, the CBOE believes that the requirements of section 11(a) of the Act will be satisfied by reason of the exemption provided in Rule 11a2-2(T) under the Act.⁶

The Exchange believes that the proposed rule change is consistent with the manner in which "Electronic Book Executions" occur in PCX Plus.⁷ Pursuant to PCX Rule 6.76(b)(4), when a market maker's quote interacts with a public customer order in the book, that market maker receives an allocation of the book order while the balance of that order is allocated on a size pro rata basis to all "crowd participants" who respond within a designated time. The term "crowd participants" includes floor brokers representing orders for both customers and broker-dealers.⁸ Accordingly, the PCX rule allows floor brokers to submit orders to buy (sell) the book on behalf of public customers and broker-dealers, as proposed by the CBOE.

The CBOE believes that this proposal enhances the ability of floor brokers to represent unaffiliated broker-dealer orders, which will serve to increase depth and liquidity in those affected classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of

⁵ 15 U.S.C. 78k(a).

⁶ 17 CFR 240.11a2-2(T).

⁷ See Securities Exchange Act Release 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

⁸ PCX Rule 6.1(b)(38) defines "crowd participants" as "market makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series." It is the CBOE's understanding that Floor Brokers on PCX acting under this Rule are limited by section 11(a) to representing broker-dealer orders from non-affiliated entities.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78(f)(5).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission recently approved CBOE Rule 6.45A as part of the Hybrid filing. See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

⁴ See CBOE Rule 6.45A(c)(ii).

trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to 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 CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 CBOE. All submissions should refer to the File No. SR-CBOE-2003-27 and should be submitted by September 9, 2003.

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. 34-48320; File No. SR-CBOE-2003-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Options Clearing Corporation Liability

August 12, 2003.

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 May 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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. On August 11, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change.³ 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

In connection with the implementation of the Intermarket Options Linkage (the "Linkage"), the CBOE hereby proposes to add an interpretation to CBOE Rule 6.7.

The text of the proposed rule change, as amended, is below.⁴ Proposed additions are in *italics*.

Chicago Board Options Exchange, Incorporated Rules

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from David Doherty, Attorney, Legal Division, CBOE to Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated August 11, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE replaced the phrase "persons associated therewith" with the phrase "associated persons."

⁴ The text of the proposed rule change appearing below incorporates a technical correction to the rule text of CBOE Rule 6.7(a) that was filed with the Commission. Telephone conversation between David Doherty, Attorney, Legal Division, CBOE and Tim Fox, Attorney, Commission, on July 30, 2003.

Rule 6.7 Exchange Liability

(a) Except to the extent provided in paragraph (b) of this Rule, and except as otherwise expressly provided in the Rules, neither the Exchange nor its directors, officers, committee members, employees or agents shall be liable to the members of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing and subject to the same exception, the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Thirteenth of the Exchange's Certificate of Incorporation.

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*** * * Interpretations and Policies**

.01-.03 (No change.)

.04 *The Intermarket Options Linkage (the "Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 6.7, and the Clearing Corporation shall have no liability to members of the Exchange or to*

¹¹ 17 CFR 200.30-3(a)(12).