damaging impact of the activities of associated persons on registered broker-dealers.

It is estimated that approximately 250 respondents will maintain and report information under these rules on a quarterly basis. The average number of hours necessary to comply with Rules 17h–1T and 17h–2T is six hours per quarter. The total annual burden is 6,000 hours for respondents, based upon past submissions. The cost per hour is approximately $416.67. Therefore, the total cost of compliance for respondents is $2,500,000 (6,000 total hours multiplied by $416.67).

The information required by the Rules must be maintained and preserved by the respondents for a period of not less than three years in an easily accessible place. In addition, it is mandatory for broker-dealers subject to Rules 17h–1T and 17h–2T to maintain and file the information required by the Rules. All information received by the Commission pursuant to the Rules is kept confidential. Finally, the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–21982 Filed 8–19–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38928; File No. SR–CBOE–97–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Eligibility Requirements for Participation on the RAES System

August 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1997, 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 self-regulatory organization. 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

CBOE proposes to add two additional eligibility requirements that market makers must satisfy in order to participate in the Exchange's Retail Automatic Execution System (''RAES'') under CBOE Rule 8.16. The Exchange is also proposing to clarify that Rule 8.16 applies to RAES for all CBOE options other than options on the Standard & Poor's 100 Stock Index (''OEX'') and options on the Standard & Poor's 500 Stock Index (''SPX''), which have separate RAES rules. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 self-regulatory organization 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 self-regulatory organization 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 purpose of the proposed rule change is to amend CBOE Rule 8.16, the rule governing RAES [1] eligibility for CBOE options (other than OEX and SPX), by adding two eligibility requirements which market makers must satisfy before they may continue to participate on RAES. In addition, the Exchange is making certain changes to CBOE Rule 8.16 to make it clear that the rule applies to RAES participation in all CBOE options other than options on the OEX and SPX.

Currently, CBOE Rule 8.16 does not contain any eligibility requirement for participating on RAES that is related to a market maker's trading activity. Paragraph (a) of Rule 8.16 merely requires a market maker: (i) To log onto the system using his own acronym and individual password; (ii) to designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant; and (iii) to log on only in person and to continue on the system only so long as he is present in the trading crowd. The Exchange has learned, however, that a few market makers across the floor have relied on their participation in RAES to derive a large percentage of their profits and have not been inclined to take the risks involved with proactively fulfilling their market maker obligations as set forth in CBOE Rule 8.3.[2] Participation on RAES was intended to be an adjunct, and not a substitute, to the normal operation of a traditional market making business. To the extent a market maker is able to derive some profits from participation on RAES with little risk, RAES participation can act as a disincentive to

[1] RAES is the Exchange's automatic execution system for small (generally less than 10 contracts) public customer market or marketable limit orders. When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry into the system. A buy order will pay the offer; a sell order will sell at the bid. An eligible market maker who is signed onto the system at the time the order is received will be designated to trade with the public customer order at the assigned price.

[2] The obligations of a market maker as set forth in CBOE Rule 8.3 include, among others, to compete with other market makers to improve markets in all series of option classes where the market maker is present, to make markets that, absent changed circumstances, will be honored to a reasonable number of contracts, and to update quotations in response to changed market conditions.

these market makers to perform their obligations under Rule 8.7.[3]

Consequently, the Exchange has determined that there should be a limit on the percentage of a market maker's overall trades, both in terms of total transaction and contract volume, that a market maker may transact on RAES over a designated period of time. The Exchange believes that this eligibility standard will provide an incentive to those market makers that currently derive a large percentage of their activity from RAES to actively fulfill their market making obligations. Additionally, this proposal would ensure that those market makers that actively fulfill their obligations are the same ones that receive the benefits of RAES participation.

The Exchange is not at this time proposing specific percentages which market makers will have to satisfy because it expects that the percentages will have to be adjusted from time to time as the Exchange gains experience with the effect of these requirements. Instead the Exchange is proposing that the Market Performance Committee be given the authority to set the percentages and the time period over which these percentages shall be determined. The Market Performance Committee would provide advance notice by way of a regulatory circular of the applicable percentages before the beginning of any time period during which these percentages would be calculated. The Market Performance Committee would also have the authority to provide exemptions to certain option classes and for all market maker activity in one or more classes of options for certain days. Finally, the Market Performance Committee would have the authority to apply the percentages in aggregate to all the options traded at a particular trading station or to single option classes.

For example, the Market Performance Committee might determine that in order to remain eligible to participate on RAES in a particular class of options a market maker may not execute through RAES orders more than 25% of his total transactions or more than 25% of his total contract volume during a particular calendar quarter. Under these requirements, the Market Performance Committee may grant exemptions from these requirements in situations in which it would be more difficult than normal to satisfy the criteria. For example, the Market Performance Committee might grant exemptions from the requirements where: (i) The average daily volume of contracts traded in the class of options is less than 100 per day for the calendar quarter; or (ii) the aggregate number of transactions in the option class at the Exchange executed through RAES orders by all market makers during the calendar quarter is greater than 25% of the number of total transactions in the option class executed by all market makers in the calendar quarter; or (iii) the aggregate contract volume at the Exchange in the option class resulting from transactions executed through RAES by all market makers during the calendar quarter is greater than 25% of the total contract volume at the Exchange in the option class executed by all market makers in the calendar quarter. In addition, the Market Performance Committee might determine to exempt a particular day of trading from the calculations if there was an unusually large volume of RAES transactions during a particular day.

In addition to being ineligible to participate on RAES, violations of the above requirements could subject the member to disciplinary action or other remedial action by the Market Performance Committee under paragraph (d) of Rule 8.16. Of course, as with all Exchange decisions involving economic aggrievement a market maker who was the subject of a Market Performance remedial action would have the right to appeal such decision under Chapter XIX of the Exchange's rules. Appeal rights also exist under Chapter XVII of the Exchange's rules for disciplinary actions taken by the Exchange. Also, despite a market maker's ineligibility under the provisions of CBOE Rule 8.16, the Exchange's Market Performance Floor Officials could require, pursuant to paragraph (c) of Rule 8.16, the ineligible market maker to log onto RAES if there is inadequate RAES participation in a particular options class.

2. Statutory Basis

CBOE believes that the proposed rule change should provide an incentive to Exchange market makers to proactively fulfill their obligations under Exchange rules. As such, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[4] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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

Within 35 days of the 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 self-regulatory organization consents, the Commission will:

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

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

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, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–37 and should be submitted by September 10, 1997.

[3] While the Market Performance Committee has the authority under rule 8.60 to take remedial action against a market maker who has been found to have not fulfilled his Rule 8.3 performance standards, it is often difficult to proceed against a particular market maker, as opposed to a trading crowd, where there are no objective criteria on which to base that market maker's performance. The proposed changes to the eligibility standards, on the other hand, will set forth objective criteria and should to a large extent be self-policing because a market maker who does not meet the objective criteria may lose their right to continue to participate on RAES.

[4] 15 U.S.C. 78f(b)(5).

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–22057 Filed 8–19–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38930; File No. SR–NYSE–97–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Regulation of Market Data Used on the Exchange Floor

August 12, 1997.

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 1, 1997, 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 self-regulatory organization. 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 introduce new Rule 39 (Market Data Restrictions and Liability Limitations) into its rules in order to regulate the receipt and use of the market data that the Exchange, with the assistance of various other parties, makes available on the Floor of the Exchange.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

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

The Exchange uses its facilities to make various categories of market information—including last sale prices, bids and offers, related sizes and the like—available on the Exchange Floor for use by Exchange members in the course of performing their membership functions. Typically, the Exchange enters into arrangements with traditional vendors of market data services in order to have the vendors assist the Exchange in making market information available on the Floor. The Exchange proposes to add a new Rule 39 (Market Data Restrictions and Liability Limitations) to regulate the provision of market data to the Floor of the Exchange through Exchange facilities. The proposed rule seeks to accomplish three purposes:

1. It would exculpate the Exchange, market data vendors, market data sources and others that assist in the process of making market information available on the Floor through the facilities of the Exchange from members' claims of liability as the result of the dissemination of inaccurate or delayed information or the omission of information. The exculpation applies in respect of any such party's negligence or any cause beyond its reasonable control. It would not exculpate any party for gross negligence or willful misconduct.

2. It would clarify that each of the derivative sources of market data retains proprietary rights to the market data that it makes available.

3. It would prohibit members from redistributing the market data that the Exchange makes available on the Floor to any other person, except for the occasional furnishing of limited amounts of information in the regular course of a member's securities business on the Floor.

The Exchange considers its members' easy and complete access to market information on the Floor of the Exchange to constitute a singularly important aspect of the Exchange's trading environment. The Exchange believes such access is essential to the process of making markets and to the capital-raising process. By providing basic protections from liability to market data vendors, sources of market data and those that assist in the process of making market data available, the proposed rule change will allow each of those entities to perform their respective roles. As a result, the Exchange believes the proposed rule change would greatly facilitate the Exchange's ability to enter into working relationships with those entities and improve the Exchange's ability to place market information in the hands of its members.

The Exchange believes the proposed legal protections would act as surrogates for direct contractual relationships between the Exchange and/or vendors on the one hand and Exchange members that receive access to market data on the Floor on the other. That is, the Exchange traditionally requires professional end users of the market data that is made available under the CTA Plan and the CQ Plan to execute contracts. Similarly, vendors traditionally require each of their market data service subscribers to execute contracts. Each such contract typically contains counterpart provisions to the ones that the Exchange is proposing for its new rule.[3] By placing those provisions into an Exchange rule, the Exchange intends to obviate the need for those contracts.

In addition, the adoption of rules designed to protect a securities market's agents and contractors and to induce those agents and contractors to assist the securities markets in providing its traditional services is nothing new. For instance, Exchange rules presently contain similar exculpatory provisions for the calculation of index values[4] and for basket information.[5] Other equity markets have similar protections in their rules.[6]

The Exchange believes that Article II, Section 6 (Use of Exchange Facilities) of the Exchange Constitution already exculpates the Exchange from liability for damages that grow out of the use or enjoyment of the Exchange's facilities. The Exchange has always deemed that Constitutional provision to implicitly protect the Exchange's agents and contractors in the same manner as it protects the Exchange and the proposed rule change is intended to supplement, not limit, the applicability of that provision. The Exchange believes the proposed rule change would merely codify and expound upon that reading of the provision and clarify the Exchange's interpretation.

[3] For instance, the proposed provisions mimic clauses found in the standard form of agreement that the Exchange and the other CTA Plan Participants enter into with vendors and subscribers. The Commission has approved contracts containing those provisions on several occasions. *See*, for example, the form of vendor contract contained in *Exhibit C* to the Second Restatement of the CTA Plan, which the Commission approved last year. (Release No. 34–37191; File No. SR–CTA/CQ–96–1; May 9, 1996.)

[4] *See* Paragraph (b) of Exchange Rule 702 (Rights and Obligations of Holders and Writers).

[5] *See* Exchange Rule 813 (Limitation of Liability).

[6] *See*, for instance, American Stock Exchange Rules 902C and 1003 and Chicago Board Options Exchange Rules 6.7, 7.11 and 23.14.