

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39292; File No. SR-CBOE-97-35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to Trading Halts and Suspensions

November 3, 1997.

I. Introduction

On July 25, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to remove a requirement that a halt declared by Floor Officials may continue for only two consecutive days and to delete a requirement that a suspension must be declared by the CBOE's Board of Directors ("Board").

The proposed rule change was published for comment in the **Federal Register** on August 21, 1997.³ No comments were received on the proposal. On October 21, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to amend Rule 6.3 to remove the requirement that a halt declared by Floor Officials may continue for only two consecutive business days, to delete Rule 6.4 relating to the suspension of trading by the Exchange's Board, and to

make certain conforming amendments to Rules 21.12 and 23.8 and to Interpretation of .02 of Rule 21.19.

Currently, pursuant to existing Rule 6.3, any two Floor Officials may halt trading in any security in the interests of a fair and orderly market for a period not in excess of two consecutive business days. Pursuant to existing Rule 6.4, the CBOE's Board may suspend trading in any security in the interests of a fair and orderly market. The Exchange believes that there is no practical difference between a halt in trading and a suspension in trading, except for the present two-day limit for a halt and the fact that a halt is declared by two Floor Officials and a suspension is declared by the Board. According to the CBOE, the same factors considered by its Board in deciding whether to "suspend" trading are considered by Floor Officials in deciding whether to "halt" trading. Rules 6.3 and 6.4 require, however, that trading may be stopped for more than two consecutive business days only if the Board acts to "suspend" trading.

The CBOE believes it is not necessary to require the Board to decide whether trading in an options class may be stopped for more than two consecutive business days. The Exchange believes that the participation of senior exchange officials is sufficient and that Board participation is unnecessary. The Exchange also believes that it is unduly cumbersome and often, impractical, to convene its Board on short notice just to decide whether trading in an options class may be stopped for more than two consecutive business days.

Pursuant to the proposed rule change, the duration of a halt declared by two Floor Officials pursuant to Rule 6.3 would not be limited to a particular number of days. Nonetheless, any halt exceeding two consecutive business days would require Floor Officials to consult with a designated senior Exchange official.⁵ Further, the proposal would require a decision to extend a trading halt beyond two consecutive business days to be reviewed at the next meeting of the Exchange's Floor Officials Committee.⁶ The proposed rule

change correspondingly would delete Rule 6.4, so that Board action no longer would be required before trading in an options class could be stopped for more than two consecutive business days. This proposed approach is consistent with the procedure for index options under Rule 24.7, where trading halts or suspensions are decided in consultation with senior Exchange officials and do not require action by the CBOE's Board.

In addition, the proposed rule change would make clear that trading may resume only upon a determination by two Floor Officials that such a resumption is in the interests of a fair and orderly market. Currently, Rule 6.3(b) allows trading to resume when two Floor Officials determine *either* that the conditions that led to the halt no longer are present *or* that a resumption of trading would serve the interests of a fair and orderly market. The Exchange believes that taken literally, the existing language would enable trading to resume if the conditions that led to the halt no longer are present, even if a resumption of trading would be contrary to the interests of a fair and orderly market, an interpretation that would conflict with the CBOE's practice and would be contrary to the policies under the Act.

Finally, the deletion of Rule 6.4 requires conforming deletions of certain non-substantive references to trading suspensions under Rule 6.4 that appear in Rule 21.12 and Interpretation .02 of Rule 21.19 (concerning government securities options) and in Rule 23.8 (concerning interest-rate option contracts).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange.⁸ The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁹ in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest by allowing Floor Officials, in consultation with senior Exchange officials, to evaluate and to consider market conditions and circumstances and to halt trading for as long as

⁷ 15 U.S.C. 78f.

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 38937 (August 14, 1997), 62 FR 44500.

⁴ See Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated October 14, 1997 ("Amendment No. 1"). In Amendment No. 1, the CBOE revises the proposed rule change to require under Rule 6.3 that Floor Officials consult with a designated senior exchange official prior to halting trading in a security for more than two consecutive business days. In addition, in Amendment No. 1, the Exchange proposes to provide that any trading halt under Rule 6.3 that lasts more than two consecutive business days must be reviewed at the next regularly scheduled meeting of the Exchange's Floor Officials Committee, which is authorized to determine whether, in the interests of a fair and orderly market, to terminate or modify any such trading halt that is then still in effect.

⁵ See Amendment No. 1, *supra* note 4.

⁶ *Id.* Amendment No. 1 provides that the Floor Officials Committee will make a determination as to whether to terminate or modify any trading halt still in effect at the time of the Floor Officials Committee's next regularly scheduled meeting. It is the understanding of Commission staff that the Floor Officials Committee will review and discuss all trading halts with durations exceeding two consecutive business days regardless of whether trading has since resumed in the particular security. Telephone conversation on October 20, 1997 between Arthur B. Reinstein, Senior Attorney, the CBOE and Deborah L. Flynn, Attorney, Division of Market Regulation, SEC.

necessary in the interests of a fair and orderly market.

Specifically, the Commission believes that it is reasonable to declare a trading halt in a particular security for a period exceeding two consecutive business days without requiring the specific approval of a majority of the Exchange's Board. The Commission recognizes that it may be impractical to convene the Board each time a determination must be made as to whether to extend a trading halt in a particular security beyond two consecutive business days. The Commission notes that in eliminating the Board's participation in the decisionmaking process, the proposed rule change, as amended, does not provide unbridled discretion to the Exchange's Floor Officials to declare a trading halt of such duration. Instead, the Commission notes that the proposal, as amended, requires two procedures which the Commission believes will provide some assurances that a decision to halt trading in a security for longer than two consecutive business days will receive proper consideration. First, the Commission believes that the involvement of a senior Exchange official should ensure that the interests of all market participants are carefully considered in determining the propriety of a trading halt. Second, the review of each trading halt declared exceeding two consecutive business days by the Exchange's Floor Officials Committee should ensure that the CBOE's management structure remains apprised of the manner in which the proposed rules are applied. In the event that the Exchange's Floor Officials Committee determines that the rules are not being applied in an even-handed and fair manner, the Commission expects the Exchange to reevaluate the process and propose changes, as necessary.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 further clarifies the process by which a determination is made to halt trading in a particular security for more than two consecutive business days. The Commission believes that requiring the consultation of a senior Exchange official and review by the Exchange's Floor Officials Committee clarifies the discretion granted to Floor Officials with respect to trading halts and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act¹⁰ to approve Amendment No. 1 to

CBOE's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-97-35 and should be submitted by December 3, 1997.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-97-35), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39295; File No. SR-PCX-97-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Charges and Recommended Fines for Late SIPC Reports

November 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on

¹¹ 15 U.S.C. 78s(b)(2).
¹² 17 CFR 200.30-3(a)(12).
¹ 15 U.S.C. 78s(b)(1)(1994).

October 14, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I II and III below, which Items have been prepared by the PCX. 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 is proposing to modify the late charges and recommended fines applicable to members' late filing of forms and assessments with the Exchange pursuant to the Securities Investor Protection Act of 1970 ("SIPA").² The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

Text of the Proposed Rule Change

Financial Reports

¶3405

Rule 2.12(a)—(b)(1)—No change.

Rule 2.12(b)(2). Each member organization *for which the Exchange is the designated collection agent must* [shall] file with the Exchange such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any member organization that fails to file such form or assessment in a timely manner *will* [shall] be subject to a late filing charge as follows:

Number of days late	Amount of charge
1-30	[\$200] \$100
31-60	[400] 200
61-90	[800] 300

Provided however: (A) If a member organization files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to a fine pursuant to Rule 10.13; and (B) if a member organization fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such member organization *will* [shall] be subject to formal disciplinary action pursuant to Rule 10.3.

Commentary:

.01-.02—No change.

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² 15 U.S.C. 78aaa-78111(1994).

¹⁰ 15 U.S.C. 78f(b)(5).