

joint venture participants have the right to appeal fines under the Summary Fine Rule.

The Exchange also proposes to amend Exchange Rule 6.51, Interpretation and Policy .01, by amending the final paragraph to delete the reference to the Floor Procedure Committee. This change is being proposed to conform the Exchange's Rule language with the Exchange's current practice. The Floor Procedure Committee is no longer involved in fining floor members who violate Rule 6.51(a) or (b); instead members are fined pursuant to the Summary Fine Rule.¹²

The Exchange is proposing that Rule 8.51 ("Firm Quote Rule") be revised as well, to provide that floor officials may fine members of trading crowds under the Summary Fine Rule for violations of the Firm Quote Rule.¹³ This change is being proposed to consolidate all of the minor rule violation authority of floor officials under the Summary Fine Rule, rather than having the Firm Quote Rule refer to Rule 6.20, which then refers back to the Summary Fine Rule. This proposed rule change also makes certain changes to clarify and incorporate Rule 6.20, the Summary Fine Rule, and the Trading Conduct and Decorum Circular into other Exchange Rules.¹⁴

III. Discussion

After careful review the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulation thereunder applicable to a national securities exchange.¹⁵ Specifically, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act,¹⁶ because the proposed rule change is designed to promote just and equitable principles of trade and protect investors and the public interest, discipline members who fail to comply

with the Exchange's Rules, and provide for fair disciplinary procedures.

In the proposed rule change, the Exchange proposes, in part, to: (1) clarify that the Floor Procedure Committee is no longer involved in fining floor members for violating CBOE Rule 6.51(a) or (b); (2) consolidate summary fine authority under the Summary Fine Rule; and (3) clarify and incorporate Rule 6.20, the Summary Fine Rule and Trading Conduct and Decorum Circular into other Exchange Rules. The Commission believes that the proposed rule change clarifies the Exchange's disciplinary procedures and conforms the Exchange's Rules with current practice. The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ because the clarification and enhancement of the Exchange's summary fine plan promotes just and equitable principles of trade.

The Exchange also proposes to: (1) create a twelve-month look back period for assessing fines for second or subsequent offenses; (2) levy a fine for a first offense equal to the fine authorized for a second or third offense and impose a fine authorized for a third offense for a first or second offense based on the seriousness of the offense; (3) fine supervisory personnel who fail to adequately supervise associated persons; (4) add categories of behavior subject to summary fines as well as increase current fines; and (5) clarify that floor officials have the authority to direct members and persons employed by or associated with members to act or cease to act to achieve compliance with Exchange Rules. The Commission believes that these amendments to the Exchange's Rules and Trading Conduct and Decorum Circular are consistent with Section 6(b)(6) of the Act,¹⁸ because the proposed changes provide for prompt, effective and appropriate discipline under the Exchange's Summary Fine Rule. Further, the proposed rule change encourages greater supervision of persons associated with members and compliance with the Exchange's Rules. The Commission notes that allowing the Exchange to create a twelve-month lookback period is consistent with the existing framework of graduated fines and may increase the Exchange's ability to deter repeat offenders. Further, the Commission believes that allowing the imposition of greater fines for first or second offenses should deter serious misconduct.

The Commission believes that the amendments to CBOE Rule 6.20, clarifying the appeals procedure for non-member joint venture participants and the appeals process under the Summary Fine Rule, are consistent with Section 6(b)(7) of the Act,¹⁹ because the amendments help to ensure that the Exchange provides fair procedures for disciplining members, including joint venture participants that are treated as members of the Exchange for purposes of Exchange Rules 6.7 and 6.20. The Commission believes that the right to appeal sanctions helps to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner.

The Commission also believes that the Exchange's amendment to Exchange Rule 6.20 is appropriate in light of the practical need to allow service personnel on the trading floor. Further, the Commission believes that the President is the appropriate officer of the Exchange to grant the admission of other people onto the trading floor.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-CBOE-98-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-29341 Filed 11-2-98; 8:45 am]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40604; File No. SR-CBOE-98-44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Authority Over RAES Rejects

October 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 2, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission

¹⁹ 16 U.S.C. 78f(b)(7).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹² Telephone conversation between Arthur Reinstein, Associate General Counsel, CBOE, Debora Barnes, Senior Attorney, CBOE, and Terri Evans, Attorney, Division, Commission, on September 1, 1998.

¹³ The Exchange has issued separate circulars setting forth fine schedules for violations of Rule 8.51 with respect to OEX and DJX options. These circulars were approved by the Commission in SR-CBOE 96-31 and SR-CBOE-97-45.

¹⁴ For example, in Amendment No. 1, the Exchange notes that it has deleted the reference to member organizations in certain of the rules proposed to be amended by the rule filing that also refer to members, because Section 1.1 of the Exchange Constitution defines the term "member" to include either an individual member or a member organization.

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

¹⁶ 15 U.S.C. 78f(b)(5)-(b)(7).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(6).

("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by 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

CBOE proposes to amend CBOE Rule 6.8(b) to allow either the Exchange's Vice Chairman or the Chairman of the appropriate Market Performance Committee ("MPC") to allow transactions on the Exchange's Retail Automated Execution System ("RAES") to be executed at the price of the best bid or offer in the Exchange book. Currently, CBOE Rule 6.8(b) requires both these individuals to make this decision. The text of the proposed rule change is available at the Office of the Secretary, 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, CBOE included statements concerning the purpose of, and statutory 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 Exchange 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 permit either the Exchange's Vice Chairman or the Chairman of the appropriate MPC to individually allow RAES to execute orders at the price of the best bid or offer in the Exchange's Book. Under current CBOE Rules, such a decision must be made jointly. Absent such a joint determination, Exchange Rules do not permit a trade to be executed on RAES when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book ("Book"), and instead requires that related RAES orders be rejected and re-routed by the Order Routing System to the broker for manual representation.

For practical reasons, CBOE believes that it is necessary to have only one

person make this decision instead of two. On the infrequent occasion when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book, immediate action is required. In these situations, it is often extremely difficult to contact both people. For instance, either Vice Chairman or Chairman may not be in the vicinity of the Exchange or reachable; however, in this situation usually the other individual is reachable.

2. Statutory Basis

The Exchange believes that the proposed rule change enhances its ability to make competitive, fair and orderly markets in options. The Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(C)(ii)³ of the Act in that it assures fair competition among markets. In addition, CBOE believes that the proposed rule change is in furtherance of Section 6(b)(5) of the Act⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, 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 burden on competition that is not necessary or appropriate in furtherance of the Act.

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

Written comments on the proposed rule change were neither solicited nor 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.

³ 15 U.S.C. 78k-1(a)(1)(C)(ii).

⁴ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 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-98-44 and should be submitted by November 24, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-29342 Filed 11-2-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40605; File No. SR-NYSE-98-26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., Relating to Delisting of Securities

October 26, 1998.

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 October 9, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was originally submitted on August 24, 1998. However, the proposed rule