

notice and order, the Commission is seeking comment from interested persons on Amendment Nos. 1 and 2 and is approving the proposed rule change and is approving Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of the Proposal

The proposal would amend CBOE Rule 8.51 to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection. Specifically, the proposal would amend CBOE Rule 8.51 to deny firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and are represented at the trading station at approximately the same time and cumulatively exceed the firm quote requirement for that particular class of options.⁶ Under the proposed new paragraph (a)(3) of CBOE Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change the market pursuant to the terms of the "trade or fade" policy set forth in paragraph (b) of the Rule.⁷

The Exchange also proposes to amend paragraph (b) of CBOE Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders proposed to be subject to the firm quote guarantee.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section (6)(b)(5) of the Act⁸ which states that, among other things, the rules of an

dated January 5, 2000 ("Amendment No. 2"). In Amendment No. 2, CBOE proposes to delete that portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders.

⁶ For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to a floor broker in a crowd to buy ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another.

⁷ Under the "trade or fade" policy, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. CBOE Rule 8.51(b).

⁸ 15 U.S.C. 78f(b)(5).

exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.⁹

The Commission believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time will prevent market makers from being subjected to undue risk arising from an inability to refresh their quotes in a timely manner. The proposal should also prevent orders from being broken up by series solely to qualify for firm quote protection. This, in turn, should ensure that all customer orders are treated consistently with respect to firm quote protection.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 1 made several changes to the portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders. Amendment No. 2 then deleted that same portion of the proposed rule change, leaving only sections of the proposal which were published in the **Federal Register** for notice and comment. The Commission did not receive any comments on the proposed rule change. Accordingly, the Commission finds good cause pursuant to Section 6(b)(5) of the Act for accelerating approval of Amendment Nos. 1 and 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are 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 at

⁹ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-99-21 and should be submitted by April 19, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-99-21), as amended, is approved.

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. 34-42566; File No. SR-CHX-99-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-Opening Orders in Dual Trading System Issues

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice hereby is given that on January 3, 2000, the Chicago Stock Exchange, Inc. ("CHX" 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 Exchange. 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 Exchange Article XX, Rule 37(a)(4) governing the handling of pre-opening orders to define what constitutes a pre-opening order for purposes of that rule. The text of the proposed rule change follows, additions are italicized.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Chicago Stock Exchange Rules

Article XX

Rule 37. Guaranteed Execution System and Midwest Automated Execution System (a) Guaranteed Executions.

4. Preopenings. Preopening orders in Dual trading System issues must be accepted and filled at the primary market opening *trade price*. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in Nasdaq/NM securities must be accepted and filled at the Exchange opening *trade price*. In trading halt situations, orders will be executed based on the Exchange reopening price. *For purposes of this rule, a pre-opening order in a Dual trading System issue is an order received prior to a primary market trade and prior to a primary market quote in the subject security.*

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 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 explicitly define pre-opening orders in Dual Trading System Issues.³ Specifically, the proposed rule change will define pre-opening orders in Dual Trading System Issues as orders that are received before a primary market opens a subject security based on a print⁴ or based on a quote.

The reason for the rule change stems from the wording of Exchange Article XX, Rule 37(a)(4); specifically, the requirement that pre-opening orders in Dual trading System Issues be accepted and filled at the primary market *opening*. Under this rule, orders received at the CHX before the first

primary market *print* in a subject security are customarily filled at that first print price. The rule has always been applied in that manner because *prints* are the most common way of effecting the opening in a security. As such, it has been the practice at the CHX to treat orders received before the first primary market print as pre-opening orders. Nevertheless, on occasion a primary market will open a security by disseminating a *quote* without a corresponding print. When a security is opened in this fashion, subsequently received orders are, in fact, not pre-opening order.

However, because Rule 37(a)(4) does not explicitly define what constitutes a pre-opening order, the customary practice of treating all orders received before the first primary market print, including those received before the first primary market print but after the primary market opening quote, as recently been the cause of some confusion and unintended execution guarantees. Therefore, while the Exchange remains committed to ensuring that pre-opening orders sent to the CHX receive the same opening price execution on the CHX that they would have received had they been sent to a primary market, it believes it necessary to make clear what constitutes a pre-opening order. In doing so, the Exchange believes that both the CHX specialist community and their customers will benefit by eliminating any confusion that may exist regarding the execution responsibilities of specialists and expectations of customers.

As such, the proposed rule change will clarify that orders received after a primary market opens a security on a quote are not pre-opening orders for purposes of Rule 37(a)(4). Specifically, the proposed rule change provides that a pre-opening order in a Dual trading System Issue is an order received prior to a primary market trade and prior to a primary market quote in a subject security. Thus, under the proposed rule, an order received at the CHX after a primary market opens a security on a quote will not be entitled to be filled based on a subsequent primary market print.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)⁵ of the Act because 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, in general, 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.

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 date of publication of this notice in the **Federal Register** or within such other 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, 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, NW, Washington DC 20549-0609. Copies of the submissions, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-99-31 and should be submitted by April 19, 2000.

³Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

⁴A print is defined as an executed trade. Telephone call between Dan Liberti, Vice President, Market Regulation, CHX and Kelly Riley, Attorney, Division of Market Regulation, SEC, on February 24, 2000.

⁵ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42563; File No. SR-OCC-99-16]

Self Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Exercises by Put Holders in a "Short Squeeze" Situation

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend Article VI, Section 19 to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.²

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 amend Article VI, Section 19 of OCC's by-laws to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

Currently, Article VI, Section 19 treats calls and puts differently in a short-squeeze situation. Section 19(a)(3) allows OCC to suspend the exercise settlement obligations of clearing members' assigned execution notice for their call option contracts until (i) OCC determines that there is no reasonable likelihood that a sufficient supply of the underlying security will become available, in which case OCC fixes a cash settlement price³ or (ii) OCC determines that there is a sufficient supply of the underlying security available, in which case OCC either fixes a new exercise settlement date or, if delivery would be inequitable, a cash settlement price.⁴

In contrast, Article VI, Section 19 does not currently give OCC discretion to protect the benefit of a put holder's bargain in a short squeeze situation. Instead, as it is currently written, Article VI, Section 19(a)(2) gives OCC the limited power to prohibit the exercise of put option contracts by clearing members who will be unable to deliver the underlying securities on the exercise settlement date due to the short squeeze.⁵ If OCC were to maintain such a prohibition through the option's expiration, a put holder who was unable to obtain the underlying stock would lose the benefit of the option even though the option is in the money.

Rather than allowing OCC to prohibit put exercises in a short squeeze

situation, the proposed language would allow OCC to treat puts in the same manner as calls by giving OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock would extend past the option expiration date and, upon making that determination, to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the proposed change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally in a short squeeze situation.

Because the proposed rule change would affect the fundamental obligations of put writers, OCC is making it effective only on a prospective basis with respect to new series of options introduced after the latter of (i) approval of the rule change by the Commission or (ii) commencement of distribution of a new or amended Options Disclosure Documents or an Options Disclosure Document⁶ supplement disclosing the substance of the rule change.

Article XXIV, Section 5, which relates to buy-write options unitary derivatives (BOUNDS)⁷ is proposed to be amended so that it conforms to the proposed new language for Article VI, Section 19.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, protect investors and the public interest.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

³ Article VI, Section 19(c) of OCC's by-laws.

⁴ Article VI, Section 19(b) of OCC's by-laws.

⁵ The asymmetrical treatment of puts and calls was first addressed in 1979, when OCC believed that a call holder who is fully prepared to perform his obligation (*i.e.*, pay the exercise price) should not be disadvantaged merely because his exercise happens to be randomly assigned to an uncovered writer. Securities Exchange Act Release No. 16014 (Aug. 3, 1979), 44 FR 47424, (Aug. 13, 1979). OCC now believes that it is inappropriate to render a put holder's contract valueless when circumstances beyond his control (often a bankruptcy filing or other event adversely affecting the value of the underlying stock and thus validating the put holder's market judgment) disable him from obtaining the underlying stock. Such a result would generally be perceived as unfair and the desirability of avoiding a perception of unfairness outweighs the somewhat legalistic basis for the present rule.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

⁶ 17 CFR 240.9b-1.

⁷ Securities Exchange Act Release No. 36960 (Mar. 13, 1996), 61 FR 11458.