

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43227; File No. SR-CBOE-00-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Codify the CBOE's Existing Policy Prohibiting Harassment and Certain Other Similar Improper Trading Practices

August 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 11, 2000, 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 Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 codify the Exchange's existing policy prohibiting harassment and certain other similar improper trading practices.

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 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

The purpose of the proposed rule change is to codify the Exchange's existing policy prohibiting harassment and certain other similar improper trading practices, that has historically been set forth in Exchange Regulatory Circulars.<sup>5</sup> These circulars, which specifically address issues involving collusion, harassment, and intimidation, have stressed to the CBOE membership that such activities are considered to be conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 4.1. Accordingly, members and those persons associated with members engaging in such activities are subject to disciplinary action by the CBOE Business Conduct Committee as violations of CBOE Rule 4.1. The Exchange has, in fact, successfully brought several disciplinary actions, in furtherance of its obligations as a self-regulatory organization, involving violations of this longstanding policy. Furthermore, the Exchange has periodically made this conduct the subject of mandatory member education programs.

The CBOE's existing policy set forth in its regulatory circulars provides that among the prohibited activities are agreements or understandings among members not expressly provided for in the Exchange's rules that have as their intended purpose or effect the lessening of competition on the Exchange, as well as any expressions or other acts intended to discourage a member from making competitive markets in a manner permitted by the Exchange's rules. There are many specific types of conduct that are prohibited by the Exchange's policy, as it has been detailed in Regulatory Circulars RG 00-30 and RG 97-167 and which is being codified in the CBOE rules.

Although the policy is firmly grounded within the scope and meaning of CBOE Rule 4.1, the Exchange believes that codifying the policy in the CBOE rules will serve to highlight the policy to CBOE members and reinforce the Exchange's prohibition on any such anti-competitive conduct. To this end, the Exchange is codifying the policy in new CBOE Rule 4.19 (Prohibition Against Harassment) to explicitly provide that harassment, threats, intimidation, collusion, refusals to deal, or retaliation that have the intended

purpose or effect of discouraging a member or other market participant from acting, or seeking to act, competitively are prohibited and shall be deemed conduct inconsistent with just and equitable principles of trade under CBOE Rule 4.1. The new CBOE Rule 4.19 also provides that among the many types of conduct that are prohibited, and which shall be deemed conduct inconsistent with just and equitable principles of trade, are harassment, threats, intimidation, collusion, refusals to deal, or retaliation against any person or entity in connection with: (i) A listing proposal made by such person or entity to any exchange or other market; (ii) such person's or entity's advocacy or proposal concerning listing or trading on any exchange or market; and (iii) such person or entity making markets in or trading any option on any exchange or other market, that have the intended purpose or effect of discouraging such person or entity from acting, or seeking to act, competitively.

##### 2. Statutory Basis

Because the proposed rule change will codify the Exchange's long-standing policy regarding the Exchange's prohibition against harassment and other similar practices, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5)<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

#### 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

Written comments were neither solicited nor received.

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

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See CBOE Regulatory Circulars RG 00-30 and RG 97-167.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Act<sup>8</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 therefore with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statement 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 the File No. SR-CBOE-00-36 and should be submitted by September 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43238; File No. SR-CBOE-00-07]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Board Options Exchange, Incorporated To Facilitate the Conversion to Pricing in Decimals

August 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 6, 2000, the Chicago Board Options Exchange, Incorporated ("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 Exchange filed amendments to the proposed rule change on August 7, 2000 and August 16, 2000, respectively.<sup>3</sup> 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

The CBOE proposes to amend its rules to conform to the securities industry's Decimals Implementation Plan submitted to the Commission on July 24, 2000, and to facilitate the conversion to pricing in decimals. The text of the proposed rule change is available at the Commission and the CBOE.

#### 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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter dated August 7, 2000, from Angelo Evangelou, Attorney, Legal Division, CBOE, to Alton Harvey, Office Head, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 converts the filing to a non-controversial filing under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder and requests the Commission to waive the 5 day pre-filing notice requirement and the 30-day operative period. Amendment No. 1 also updates the background material set forth in Item II.A of this notice and makes certain changes to the proposed rule text. Amendment No. 1 replaces and supersedes the original filing in its entirety. See also Letter dated August 15, 2000, from Angelo Evangelou, Attorney, Legal Division, CBOE, to Alton Harvey, Office Head, Division, Commission ("Amendment No. 2"). Amendment No. 2 amends CBOE Rule 30.72 to conform the rule to a recent proposed amendment to the Intermarket Trading System Plan ("ITS Plan") relating to decimal pricing.

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

##### 1. Purpose

*Background.* On January 28, 2000, the Commission issued an order directing the national securities exchanges and the National Association of Securities Dealers, Inc. ("Participants"), pursuant to Section 11A(a)(3)(B) of the Act,<sup>4</sup> to jointly submit a decimalization implementation plan.<sup>5</sup> That order prescribed a timetable for the Participants to begin pricing some equity securities, and options on those equity securities, in decimals by July 3, 2000, and all equities and options in decimals by January 3, 2001. However, on March 6, 2000, the National Association of Securities Dealers, Inc. announced that the Nasdaq Stock Market, Inc. ("Nasdaq") would not have sufficient capacity to meet the target dates for implementation. Subsequently, on April 13, 2000, the Commission issued an order staying the original deadlines for decimalization.<sup>6</sup>

On June 8, 2000, the Commission issued another order ("Order")<sup>7</sup> requiring the Participants to act jointly in planning, discussing, developing, and submitting to the Commission a plan that will begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000 ("Plan"). The Commission directed the Participants to submit the Plan to the Commission by July 24, 2000 and further directed each Participant to file the rule changes necessary to implement the phase-in plan.

As part of the Order, the Commission requires the full implementation of decimal pricing in all exchange-traded and Nasdaq equity securities and options to be completed no later than April 9, 2001, and that the Participants submit within two months after full implementation (individually or jointly) a study to the Commission regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security. Further, within thirty days after submitting the study, and absent Commission action, the Participants individually must submit proposed rule

<sup>4</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>5</sup> See Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5003 (Feb. 2, 2000).

<sup>6</sup> See Securities Exchange Act Release No. 42685 (April 13, 2000), 65 FR 21046 (April 19, 2000).

<sup>7</sup> See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> 17 CFR 200.30-3(a)(12).