

Sections, to the extent deemed necessary, to permit the recapture of any Purchase Payment Credit under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, First Variable's recapture of the Purchase Payment Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of Annuity Fund E. Applicants contend, however, that recapture of the Purchase Payment Credit is not violative of Rule 22c-1. Applicants argue that the recapture does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c-1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of a Purchase Payment Credit, First Variable will redeem interests in an Owner's Contract value at a price determined on the basis of current net asset value of Annuity Fund E. The amount recaptured will equal the amount of the Purchase Payment Credit that First Variable paid out of its general

account assets. Applicants state that, although Owners will be entitled to retain any investment gain attributable to the Purchase Payment Credit, the amount of such gain will be determined on the basis of the current net asset value of Annuity Fund E. Thus, Applicants state that no dilution will occur upon the recapture of the Purchase Payment Credit. Applicants also assert that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Purchase Payment Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Purchase Payment Credit under the Contracts and Future Contracts.

### Conclusion

Applicants assert that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their Application described herein. Applicants assert that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the Application described herein, investors would not receive any benefit or additional protection thereby.

Applicants assert, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44073; File No. SR-CBOE-01-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending the Pilot Program for Rule 6.8(c) Regarding Operation of the Retail Automatic Execution System

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 February 16, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4,<sup>3</sup> which renders the proposed rule change effective upon receipt of this filing by 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 Exchange hereby proposes to amend CBOE Rule 6.8(c) in order to extend, for an additional six-month period until August 21, 2001, the pilot program ("Pilot") that currently provides for certain orders to be rejected from the CBOE's retail Automatic Execution System ("RAES")<sup>4</sup> for manual handling in certain limited situations.<sup>5</sup> The text of the proposed rule change is available at the CBOE and the Commission.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

<sup>5</sup> The current Pilot expired on February 21, 2000. See discussion below, Section II.A.1.

### 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 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 Commission approved the Pilot on November 22, 1999.<sup>6</sup> The Pilot amends CBOE Rule 6.8, which governs the operation of RAES, to provide for certain orders to be rejected from RAES for manual handling in the limited situation where the bid or offer for a series of options generated by the Exchange's Autoquote system (or any Exchange approved proprietary quote system) becomes crossed or locked with the best bid or offer for that series as established by a booked order. On April 3, 2000, the Commission approved an extension of the Pilot until August 21, 2000.<sup>7</sup> On October 17, 2000, the Commission approved another extension of the Pilot until February 21, 2001.<sup>8</sup>

In addition, during the six-month period covered by the first extension of the Pilot,<sup>9</sup> the Exchange filed two proposed rule changes to implement systems changes developed by the Exchange. The CBOE represents that the systems changes it proposed are designed to virtually eliminate the need for certain orders to be rejected from RAES in the situations currently covered by the Pilot ("Certain RAES Kick-Outs"). The first proposal,<sup>10</sup> which has been approved by the

<sup>6</sup> Securities Exchange Act Release No. 42168 (November 22, 1999), 64 FR 66952 (November 30, 1999).

<sup>7</sup> Securities Exchange Act Release No. 42615 (April 3, 2000), 65 FR 19401 (April 11, 2000) ("First Extension Notice").

<sup>8</sup> Securities Exchange Act Release No. 43448 (October 17, 2000), 65 FR 63272 (October 23, 2000).

<sup>9</sup> See First Extension Notice.

<sup>10</sup> Securities Exchange Act Release No. 43430 (October 11, 2000), 65 FR 62776 (October 19, 2000) (notice of proposed rule change).

Commission,<sup>11</sup> involves an enhancement to the Exchange's Automated Book priority system ("ABP"). The Enhancement is called ABP Split Price. The second proposal, which is pending, seeks approval for an enhancement to the Exchange's electronic limit order book ("EBook"). That proposed enhancement is called Autoquote Triggered EBook Execution ("Trigger").<sup>12</sup>

The Exchange now seeks approval to extend the Pilot for an additional six months. The Exchange represents that implementation of Trigger (if approved by the Commission) and ABP Split Price (which has been approved by the Commission) would virtually eliminate, but not obviate, Certain RAES Kick-Outs. The Exchange is requesting this extension of the Pilot so that procedures currently permitting Certain RAES Kick-outs will remain in effect while the Commission considers the Exchange's Trigger proposal and during Commission review of any forthcoming Exchange proposal seeking permanent approval of those RAES kick-out procedures.<sup>13</sup>

##### 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)<sup>14</sup> of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>11</sup> Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

<sup>12</sup> SR-CBOE-00-22. The Exchange represents that Trigger, if approved and implemented as currently proposed, would allow certain booked orders to be automatically executed up to applicable RAES contract limits, but only where an Autoquote-generated bid has become crossed or locked with the Exchange's best bid or offer as established by a booked order. According to the Exchange, implementation of Trigger would eliminate the majority of RAES kick-outs that ensure when firms submit orders seeking to take advantage of pricing anomalies.

<sup>13</sup> The Exchange intends to file a proposed rule change seeking permanent approval of the procedures that currently permit Certain RAES Kick-Outs.

<sup>14</sup> 15 U.S.C. 78s(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder<sup>16</sup> because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of such proposal, 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.

Proposed rule changes filed with the Commission pursuant to Rule 19b-4(f)(6) of the Act do not "become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest."<sup>17</sup> The CBOE has requested that the Commission waive the 30-day delay in the operative date of the proposed rule change.<sup>18</sup> The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day delay in the operative date of the proposed rule change because the proposal simply extends the previously approved Pilot.<sup>19</sup>

### 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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> Telephone conversation between Angelo Evangelou, Attorney, CBOE, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission (February 26, 2001).

<sup>19</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-01-05 and should be submitted by April 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**  
Secretary.

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## DEPARTMENT OF STATE

[Public Notice 3613]

### **Bureau of Educational and Cultural Affairs Request for Grant Proposals: Civic Education Curriculum Development and Teacher Training Project for Kyrgyzstan**

**SUMMARY:** The Office of Global Educational Programs, Bureau of Educational and Cultural Affairs of the United States Department of State announces an open competition for the Civic Education Curriculum Development and Teacher Training Project for Kyrgyzstan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to cooperate with the Bureau in the administration of a two-year project to support the development and implementation of a new curriculum unit for a ninth grade civic education course in Kyrgyzstan. The Bureau will award up to \$300,000 to facilitate the project. The U.S. organization will work in coordination with the Public Affairs Section of the U.S. Embassy in Bishkek; the Ministry of Education and its appointees in Kyrgyzstan; and an

advisory group of civic educators from the Institute for Regional Studies, an NGO in Bishkek. The project will comprise three phases of activity:

(1) Recruitment and selection of a six-member curriculum development team of Kyrgyz educators and preliminary consultations in Bishkek, followed by the identification by the U.S. grantee organization of a reference collection of civic education and teacher training materials for delivery to the curriculum development team in Kyrgyzstan, (see the POGI for details of the recruitment and selection process);

(2) A 10 to 12 week U.S.-based curriculum development and teacher training workshop, coordinated by the U.S. grantee organization, in which the team will produce a draft curriculum unit which includes a teacher's guide and student handbook for the ninth grade civics course;

(3) Coordination by the U.S. grantee, in collaboration with the Ministry of Education and the local NGO partner, of testing of the draft curriculum unit in no fewer than twelve pilot-test schools in Kyrgyzstan; specialized training seminars for in-service and pre-service teachers in Kyrgyzstan; and revision and publication of a completed curriculum unit for use in follow-on activities.

Applicants may suggest, in their proposals, topics to be developed by the curriculum team; however, final determination of appropriate topics will be made in consultation with the curriculum development team from Kyrgyzstan before the start of the U.S.-based curriculum-training workshop in Phase II.

The Bureau solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. Grantee organizations will consult regularly with the Bureau and with the Public Affairs Section of the U.S. Embassy in Bishkek with regard to participant selection, program implementation, direction and assessment. Proposals should demonstrate an understanding of the issues confronting education in Kyrgyzstan as well as expertise in civic education, curriculum development and teacher training.

#### **Program Information**

*Overview:* The goals of the project are to assist a team of educators in Kyrgyzstan to develop an up-to-date curriculum unit for a ninth grade course in civic education and to assist in training teachers and teacher-trainers to use this unit in classrooms in Kyrgyzstan. The rationale for this project is that improving citizenship

education at the high school level will better prepare students in Kyrgyzstan to participate actively in building a pluralistic, democratic society. Additionally, the Bureau expects that the project will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents, while training teachers to assist in supporting these relationships.

#### *Guidelines*

##### *Program Planning and*

*Implementation:* Grant activities should begin on or around September 1, 2001, with Phase I of the project, in which the grantee will collaborate with the Institute of Regional Studies to coordinate recruitment and selection of a six-member curriculum development team comprised of local practitioners (classroom teachers, teacher trainers, and curriculum specialists), and conduct a one to two week preliminary planning trip to Bishkek for consultations. Recruitment and selection activities should be finalized before the Phase I consultation visit. Proposals should suggest a tentative recruitment strategy and selection criteria for implementation by the Institute of Regional Studies. The recruitment strategy and selection criteria may be revised and confirmed by the U.S. grantee organization in cooperation with the Institute and in consultation with the Public Affairs Section of the U.S. Embassy after the grant is issued.

A committee in Kyrgyzstan, which will be responsible to the Institute of Regional Studies and the grantee organization, will conduct final selection of the curriculum development team. The committee will be comprised of local civic education specialists, representatives of the U.S. grantee organization, representatives of the local NGO partner and a representative from the Public Affairs Section of the U.S. Embassy in Bishkek. During Phase I, the U.S. grantee organization will be responsible for the collection and mailing of a reference collection of civic education materials to the curriculum development team in advance of the U.S.-based curriculum development workshop.

In Phase II, members of the curriculum development team will spend approximately 10 to 12 weeks in a highly structured U.S.-based workshop to be sponsored and organized by the U.S. grantee organization, and will attend focused curriculum development and teaching methodology seminars; observe relevant aspects of the U.S. educational system;

<sup>20</sup> 17 CFR 200.30-3(a)(12).