

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Regulation S governs offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (Securities Act). The purpose of Regulation S is to provide clarification of the extent to which section 5 of the Securities Act applies to sales and resales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Rule 13e-3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E-3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. This information is made available to the public. Information provided on Schedule 13E-3 is mandatory. Approximately 300 issuers file Schedule 13E-3 annually and it takes approximately 137.25 hours per response for a total of 41,175 annual burden hours. It is estimated that 25% of the 41,175 total burden hours (10,294 burden hours) is prepared by the company.

Form 12b-25 provides notice to the Commission and the marketplace that a public company will be unable to timely file a required periodic report. The purpose of Form 12b-25 collection of information is to aid in the development of, and to ensure the maintenance of fair markets, in the securities of publicly held companies. The information required is filed on occasion and is mandatory. All information is provided to the public for review. Publicly held companies file Form 12b-25. Approximately 6,000 issuers file Form 12b-25 and it takes approximately 2.5 hours per response for a total of 15,000 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to

the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 16, 2001.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45071; File No. SR-Amex-2001-27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Filed by the American Stock Exchange LLC Relating to the Prohibition on the Entry of Certain Limit Orders and Electronically Generated Orders Into the Exchange's Order Routing System

November 16, 2001.

I. Introduction

On May 4, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934¹ and rule 19b-4 thereunder,² a proposed rule change to restrict the entry of certain limit orders and electronically generated orders into the Exchange's Order Routing System. On July 16, 2001, the Exchange submitted Amendment No. 1 to the proposal.³ The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on August 3, 2001.⁴ The Commission received one comment letter on the proposal.⁵ On August 31, 2001 the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Claire McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 13, 2001 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 44594 (July 26, 2001), 66 FR 40755.

⁵ See letter from Joel Greenberg, Managing Director, Susquehanna International Group, Inc. to

Exchange filed Amendment No. 2 to the proposed rule change.⁶

II. Description of the Proposal

The Exchange is proposing to amend Amex Rules 1000, 1000A and 1200 to adopt restrictions on the entry of orders for the following equity derivative products: PDRs, such as Standard & Poors Depository Receipts ("SPDRS"), DIAMONDS and Nasdaq 100 Tracking Stock ("QQQ"); IFs, such as I-Shares; and TIRs such as Holding Company Depository Receipts ("HOLDRS"). Specifically, the proposed amendments would restrict the entry of certain limit orders and orders that are created and communicated electronically without manual input into the Exchange's electronic order routing and delivery system (Amex Order File—"AOF"), which routes orders of up to 99,900 shares of each equity derivative to the Exchange's electronic order execution and processing systems (*i.e.*, Point of Sale Specialist's Book), under certain circumstances as described below.

a. Limit Orders

Under the proposed rules, members, acting as either principal or agent, would be prohibited from entering limit orders for PDFs, IFs, or TIRs into the electronic order routing system if such orders are for the account or accounts of the same or related beneficial owners, and the limit orders are entered in such a manner that the member or the beneficial owner effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The proposed rules provide that, in determining whether a member or beneficial owner effectively is operating as a market maker, the Exchange would consider, among other things, the simultaneous or near-simultaneous entry of limit orders to buy and sell the same security; the multiple acquisition and liquidation of positions in the security during the same day; and the entry of multiple limit orders at different prices in the same security.

b. Electronically Created and Communicated Orders

The Exchange also proposes to adopt rules that prohibit members from

Jonathan G. Katz, Secretary, Commission, dated August 16, 2001 ("SIG Letter").

⁶ See letter from Claire McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated August 31, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange amended the proposed rule text to clarify that the Exchange maintains separate automatic execution systems or Portfolio Depository Receipts ("PDRs"), Index Fund Shares ("IFs"), and Trust Issue Receipts ("TIRs").

entering orders that are created and communicated electronically without manual input, if such orders are eligible for execution through the Exchange's automatic execution system.⁷ The Exchange would consider orders entered by customers or associated persons of members to involve manual input if the terms of the order are entered into an order-entry screen or there is a manual selection of a displayed order against which an off-setting order should be sent. The Exchange notes that the proposed rules would not prohibit members from electronically communicating to the Exchange orders entered by customers into front-end communication systems (e.g., Internet gateways, online networks, etc.)

III. Summary of Comments

The Commission received one comment letter on the proposed rule change from Susquehanna International Group, Inc. ("SIG"), which expressed support for the proposed rule change.⁸ In its discussion of the Exchange's proposal to prohibit members from entering or permitting the entry of orders that are created and communicated electronically without manual input if such orders are eligible for automatic execution, the commenter expressed its opinion on the nature of the conduct that the Exchange should consider as "manual input" for purposes of the proposed rules. Specifically, SIG stated its view that "the manual element of the order entry process should be significant and not merely fleeting." SIG further stated that "the mere entry of a term, such as price, or the clicking of a button to send a computer-generated order" should be insufficient to constitute manual entry. SIG requested that the Commission provide guidance on this issue.

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act,⁹ and in particular with section 6(b)(5).¹⁰ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.¹¹ The Commission believes that the proposed rule change meets these requirements.

As discussed above, the Exchange has proposed to prohibit members, acting as either principal or agent, from entering limit orders for PDFs, IFs or TIRs into the Exchange's order routing system if such orders are for the account or accounts of the same or related beneficial owners, and the limit orders are entered in such a manner that the member or beneficial owner effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular and continuous basis. The Commission has approved similar proposals filed by the Amex,¹² the International Securities Exchange ("ISE"),¹³ the Chicago Board Options Exchange ("CBOE"),¹⁴ and the Philadelphia Stock Exchange, Inc. ("Phlx") with respect to options orders.¹⁵ In considering these proposals, the Commission found that such a prohibition is a reasonable approach to prevent members (other than market makers) or customers from reaping the benefits of market making without the concomitant obligations. The Commission noted that if non-market maker members or customers were permitted to enter multiple customer limit orders to the extent that they were acting as market makers, and, at the same time, jump ahead of all other orders on the book, they would have an inordinate advantage over other market participants.¹⁶

The Commission finds that the Exchange's proposed rule, which prohibits the entry of certain limit orders, is adequately designed to prevent certain market participants from obtaining an unfair advantage by acting as market makers, while having priority over registered market makers by virtue of their customer status, and thus finds that the proposed rule is consistent with section 6(b)(5) of the Act.¹⁷

With respect to the portion of Amex's proposed rules that prohibit members from entering orders that are created and communicated electronically without manual input, if such orders are eligible for automatic execution, the

Commission notes that it has approved similar proposals by the Amex,¹⁸ the ISE,¹⁹ the CBOE,²⁰ the Pacific Exchange, Inc. ("PCX"),²¹ and the Phlx²² with respect to options orders. In approving those proposals, the Commission noted that while in the equity markets limit orders from active customers have been a valuable source of quote competition, the options exchanges' business models depend on market makers for competition and liquidity. The Commission recognized that allowing electronic order entry could give automated customers a significant advantage over market makers, which could undercut the exchanges' business models. The Commission found that it was not inconsistent with the purposes of the Act for the options exchanges to address the risk to their market makers posed by rapid entry of electronically generated orders that are designed to take advantage of temporary anomalies between current options prices and the value of the underlying stock or index.

The Commission believes that the same analysis is appropriate for the instant filing, and therefore finds that the proposed rule change seeking to prohibit members from entering orders that are created and communicated electronically without manual input, if such orders are eligible for automatic execution is not inconsistent with the purposes of sections 6(b)(5)²³ and 6(b)(8)²⁴ of the Act.

In approving this proposal, the Commission notes it does not agree with the sole commenter's view on the rules' scope. In the Commission's view, the rules as written are clear—they prohibit the entry of orders that are created and communicated electronically *without manual input*. The Commission believes that, under the language of the rules, the entry of an order term, such as price, is sufficient to constitute manual input as this involves deliberate action on the part of the sender of the order. Under a plain reading of the rules, if manual input is involved in the creating or

¹² See Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001) (noticing immediate effectiveness of SR-Amex-2001-03).

¹³ See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange ("ISE Order")).

¹⁴ See Securities Exchange Act Release No. 44258 (May 4, 2001), 66 FR 26889 (May 16, 2001) (noticing immediate effectiveness of SR-CBOE-2001-20).

¹⁵ See Securities Exchange Act Release No. 43939 (February 7, 2001), 66 FR 10547 (February 15, 2001) (noticing immediate effectiveness of SR-Phlx-01-05).

¹⁶ See ISE Order, *supra* note 13.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See *supra* note 12.

¹⁹ See *supra* note 13.

²⁰ See Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (approving SR-CBOE-00-01).

²¹ See Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000) (approving SR-PCX-00-13).

²² See Securities Exchange Act Release No. 43376 (September 28, 2000), 65 FR 59488 (October 5, 2000) (notice immediate effectiveness of SR-Phlx-00-79).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁷ See Amendment No. 1, *supra* note 3.

⁸ See SIG Letter, *supra* note 5.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(5).

communicating of an order, its entry does not violate Exchange rules.

V. Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 2, the Exchange added text to the proposed commentaries to Annex Rules 1000, 1000A, and 1200 that clarifies that the proposed commentaries relate to automatic executions systems for PDRs, IFSs and TIRs, as distinguished from the Exchange's automatic execution system for options. The Commission believes that these are technical, non-substantive changes to the proposal, which further strengthen and clarify the proposed rule change and raise no new regulatory issues. The Commission believes that Amendment No. 2 does not alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 2 is appropriate and consistent with section 19(b)(2) of the Act.²⁵

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2001-27 and should be submitted by December 17, 2001.

VII. Conclusion

For all of the aforementioned reasons, 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.²⁶

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-AMEX-00-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Margaret H. McFarland,

Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45075; File No. SR-CBOE-2001-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish Fees for Excessive RFQs on Its New Screen-Based Trading System

November 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on October 30, 2001, 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 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

CBOE is proposing to establish fees for excessive requests for quotes ("RFQs") on the Exchange's screen-based trading system. The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

²⁶ In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3(f) of the Act. 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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. 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

CBOE is proposing to establish an excessive request for quote fee applicable to the Exchange's new screen-based trading system, CBOE *direct*.³ CBOE *direct* is CBOE's new options trading engine. A component of trading on CBOE *direct* is the RFQ process (although CBOE market-makers may be required to provide continuous two-sided markets in products traded on the system). RFQs generally provide a mechanism for gauging the CBOE market in a particular option series in connection with effecting a trade in such series. Accordingly, the RFQ process is not meant to serve exclusively as an unlimited price discovery mechanism. Thus, CBOE is proposing to adopt an excessive RFQ fee based on what CBOE believes to be a more than reasonable RFQ-to-total-trade ratio.

This monthly fee will equal \$1 for any RFQ submitted by a member during a given calendar month if that member's RFQ-to-trade ratio for that month is greater than 5:1 and less than or equal to 10:1. Alternatively, this monthly fee will equal \$5 for any RFQ submitted by a member during a given calendar month if that member's RFQ-to-trade ratio for that month is greater than 10:1. In this way, CBOE believes that the fee will help reduce excessive RFQs without prohibiting members from submitting excessive RFQs.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of

³ The Exchange anticipates that, initially, trading on CBOE *direct* will occur only during extended trading hours for a limited range of products. Separately, CBOE has filed a proposed rule change to adopt certain rules governing trading on CBOE *direct*. See File No. SR-CBOE-00-55.

²⁵ 15 U.S.C. 78s(b)(2).