

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47553; File No. SR-CBOE-2003-05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Clearing Firm Prohibitions From Accepting Certain Third Party Deposits

March 21, 2003.

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 February 10, 2003, 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 CBOE. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. 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 add a rule to Chapter 4 of its rules ("Business Conduct") that would prohibit market-maker clearing firms from accepting certain deposits by third parties. The text of the proposed rule change follows:

Additions are *italicized*; deletions are in [brackets].

Chicago Board Options Exchange, Incorporated

Rules

Chapter IV

Business Conduct

Rule 4.1 through 4.20.—no change.

Third Party Deposits Prohibited

Rule 4.21. Member organizations engaged in the business of clearing and carrying the accounts of options market-makers ("Clearing Firms") registered to conduct business on the Exchange are subject to the following prohibitions:

(1) The acceptance of a check or funds transfer for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the account from which the check or transfer is drawn is not the

same as that on the account cleared or carried by the Clearing Firm.

(2) The acceptance of securities, either directly or via transfer, for deposit into any broker-dealer account cleared or carried by a Clearing Firm is prohibited if the name on the securities, or the name on the account from which the securities are drawn, is not the same as that on the account cleared or carried by the Clearing Firm.

* * * *Interpretations and Policies:*

.01 The foregoing prohibitions do not apply to checks, funds or securities for deposit to a market-maker's account that are drawn on a joint account of which the market-maker is one of the joint owners, and the title of the market-maker's account with the Clearing Firm coincides with the market-maker's designation on the joint account.

.02 The foregoing prohibitions do not apply to checks, funds or securities for deposit into the account of a U.S. broker-dealer business entity if the depositor (i) has an ownership interest disclosed on Schedule A of the broker-dealer's Uniform Application for Broker-Dealer Registration ("Form BD"), or (ii) is a U.S. broker-dealer and has an ownership interest disclosed on Schedule B of Form BD.

.03 If immediate action is required in order for an account of a broker-dealer cleared and carried by a Clearing Firm to (i) establish a positive net liquidating equity or supplement equity when required based upon internal risk control procedures of the Clearing Firm, or (ii) achieve compliance with SEC Rule 15c3-1 (the Net Capital Rule), an officer or partner of a Clearing Firm may grant an exception, which must be in writing, with respect to any transaction prohibited by this Rule 4.21.

.04 Transfers of funds or securities between two accounts cleared and carried by the same Clearing Firm are permitted provided that, if both accounts are not owned by the same person(s) or entity, the transfer must be authorized in writing by the owner of the account from which funds and/or securities would be withdrawn.

.05 Documentation evidencing any exceptions granted pursuant to Interpretation and Policy .03 above, as well as documents authorizing transfers of funds or securities between two accounts pursuant to Interpretation and Policy .04 above, shall be retained by the Clearing Firm for at least three years, the first two years in an easily accessible place for examination by the Exchange. In lieu of having the documents easily accessible, a Clearing Firm may make and keep current a separate central log, index or other file

through which the documents can be identified and retrieved.

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 CBOE proposes to adopt a rule that prohibits a member organization that is engaged in the business of clearing and carrying the accounts of options market-makers (a "Clearing Firm")³ from accepting for deposit into an account cleared or carried by the Clearing Firm a check or funds transfer drawn on the account of a third party. Under the proposed rule, Clearing Firms would be prohibited (with certain exceptions) from accepting a check or funds transfer if the name on the account from which the funds are drawn is different (*i.e.*, a "third party") from the name on the account cleared or carried by the Clearing Firm. In addition to checks or funds transfers from third parties, the proposed rule would also prohibit (with certain exceptions) Clearing Firms from accepting deposits or transfers of securities in the name of third parties. This rule filing has been undertaken as a result of a recommendation by the CBOE's Financial Regulatory Committee.⁴

The proposed rule would not prohibit a Clearing Firm from transferring funds and/or securities between different name accounts that it carries, although the proposed rule would reaffirm that

³ The proposed rule is intended to apply only to Clearing Firms as defined above. Broker-dealers that conduct a public customer business have policies and procedures that either prohibit acceptance of third party checks or require extensive due diligence.

⁴ The CBOE's Financial Regulatory Committee is primarily comprised of representatives of market-maker clearing member organizations of the CBOE. The CBOE consults this committee primarily on issues of clearing operations, margin requirements, net capital requirements, and books and records requirements. The committee provides advice, opinions, and recommendations to the CBOE on rules, interpretations, and procedures.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.