

In light of the foregoing, the Commission believes that the trade nullification rule for CBOE*direct* is appropriate.

H. Integrated Market Making and Side-by-Side Market Making

Under the Commodity Futures Modernization Act of 2000,²⁰⁶ futures contracts on single securities and narrow-based security indexes may now be traded under the joint jurisdiction of the Securities and Exchange Commission and the Commodity Futures Trading Commission. The Commission understands that SBT traders who may make markets in options on CBOE*direct* also may make markets in security futures that are based on the same underlying security or may have an affiliate that engages in such trading. In addition, SBT traders who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (*i.e.*, “integrated market making”). The Exchange has indicated that CBOE Rule 4.18, which governs the use of material, non-public information, would apply to members trading on CBOE*direct*. The Exchange represented that this rule would require a SBT market maker to maintain information barriers—that are reasonably designed to prevent the misuse of material, non-public information by such member—with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as a SBT market maker. The Commission believes that the requirement that there be an information barrier between the SBT market maker and its affiliates with respect to transactions in the option and the underlying security serve to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

I. Managing Message Traffic

CBOE has indicated that it may, in the future, be necessary to set limits on the message traffic on the SBT System to prevent it from becoming overloaded. For example, CBOE has stated that it may have to limit the number of SBT market makers that may access the SBT System through an API, or limit the number of messages sent by market makers accessing the System through an API, to protect the integrity of the System.²⁰⁷ Furthermore, CBOE has indicated that it may have to impose

restrictions on the use of a computer connected through an API if it believed that such restrictions were necessary to ensure the proper performance of the System.²⁰⁸ In addition, CBOE has stated that it wishes to be able to: (1) Specify the number of quotes over a certain time period that may be sent free by an SBT trader, or (2) impose a fee per message for sending a number that is clearly above the free number and for producing a ratio of quotes to trades over a certain time period that is higher than what would be considered a reasonable ratio.²⁰⁹ Finally, CBOE has indicated that it intends to charge fees for RFQs that exceed a certain ratio of requests-to-trades.²¹⁰

Trading options in an electronic environment presents greater capacity burdens than does the electronic trading of equity securities. For every equity security, there potentially exists dozens of overlying options, each series having a different expiration date or strike price. The continuous quoting of options, therefore, generates far more message traffic than the continuous quoting of equity securities. The Commission acknowledges that an electronic options exchange has a legitimate interest in ensuring that the amount of message traffic passing through the facilities of that exchange does not become so great as to compromise system performance. However, the Commission expects CBOE to file with the Commission, in accordance with the procedural requirements of section 19(b) of the Act²¹¹ and the substantive requirements of section 6(b) of the Act,²¹² any proposal to throttle message traffic. The Commission notes in particular that any such proposal by the Exchange must not permit unfair discrimination between CBOE*direct* participants.²¹³ Section 6(b) also requires that any dues, fees, or other charges imposed by a national securities exchange must be fair and reasonable and allocated equitably.²¹⁴

J. Accelerated Approval

Pursuant to section 19(b)(2) of the Act,²¹⁵ the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so

finding. The Commission hereby finds good cause for approving the proposal, as amended by Amendment No. 4, prior to the 30th day after publishing notice of the amended proposal in the **Federal Register**. Many of the revisions made to the proposal in CBOE's Amendment No. 4 are modeled on existing CBOE floor rules or the rules of the ISE. The Commission previously approved these CBOE rules and ISE rules and therefore believes that accelerating such rules for CBOE*direct* is appropriate because these revisions do not raise new regulatory issues. Other revisions, although not based on existing ISE or CBOE rules, were not material to the overall proposal. The Commission believes that no purpose would be served by delaying approval of the proposal until those additional revisions had been published for comment, particularly in light of the fact that no comments were received in response to the notice. Therefore, the Commission finds that good cause exists to accelerate approval of the amended proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether the amendment 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 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-CBOE-00-55 and should be submitted by May 1, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²¹⁶ that the proposed rule change (SR-CBOE-00-55), as amended, is approved on an accelerated basis.

²⁰⁸ See *id.*

²⁰⁹ See notice, *supra* note 4, 67 FR at 31040.

²¹⁰ See notice, *supra* note 4, 67 FR at 31039.

²¹¹ 15 U.S.C. 78s(b).

²¹² 15 U.S.C. 78f(b).

²¹³ See 15 U.S.C. 78f(b)(5).

²¹⁴ See 15 U.S.C. 78f(b)(4).

²¹⁵ 15 U.S.C. 78s(b)(2).

²¹⁶ 15 U.S.C. 78s(b)(2).

²⁰⁶ Pub. L. No. 106-554, Appendix E, 114 Stat. 2763.

²⁰⁷ See CBOE rule 44.6.