

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR-CBOE-2003-38 and should be submitted by October 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48524; File No. SR-CBOE-2003-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Modifying the Designated Primary Market-Maker Membership Ownership Requirement

September 23, 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 August 11, 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 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 modify the Designated Primary Market-Maker ("DPM") membership ownership requirement. The proposed rule text follows:

(Additions are *italicized*)

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 8.85(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM.

For purposes of this Rule, a trading location is defined as any separate identifiable unit of a DPM organization that applies for and is allocated option classes by the appropriate Allocation Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. The same Exchange membership(s) may not be used to satisfy this ownership requirement for different DPM organizations or different trading locations operated by the same DPM organization. Each DPM shall have until May 12, 2003 to satisfy this ownership requirement, but each DPM organization must continually own at least one membership until that date.

* * * *Interpretations and Policies:*

.04 *A DPM organization shall be deemed to own an Exchange membership for purposes of paragraph (e) of this Rule if a natural person owner of the DPM organization owns an Exchange membership that would otherwise qualify under paragraph (e) and such individual meets the following criteria: (1) Owns at least a 45% equity interest in the DPM organization; (2) maintains at least a 45% profit participation in the DPM organization; (3) is actively involved in the management of the DPM operation; and (4) maintains a constant presence on the Exchange trading floor as a primary DPM designee of the DPM organization.*

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 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

On August 21, 2000, the Commission approved a CBOE rule filing adopting a DPM membership ownership requirement.³ This requirement,

contained in CBOE Rule 8.85(e), provided, among other things, that each DPM must own at least one Exchange membership, and that the requirement would be deemed satisfied if a senior principal of the DPM owned the required membership (what constituted a "senior principal" was not defined).

On February 10, 2003, the Commission approved changes to CBOE Rule 8.85(e) to make clear that the requirements of the Rule are applicable to each DPM trading location (as opposed to each DPM organization), and to eliminate the concept that a senior principal can own a membership in place of the DPM organization.⁴

CBOE now seeks to again allow a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. More specifically, the senior principal must be a natural person owner of the DPM organization who: (i) Owns at least 45% equity interest in the DPM organization; (ii) maintains at least a 45% profit participation in the DPM organization; (iii) is actively involved in the management of the DPM operation; and (iv) maintains a constant presence on the Exchange floor as a DPM designee of the DPM organization.

When CBOE first proposed the DPM membership ownership requirement, most DPMs were smaller, local operations and the owners of the DPMs were floor traders who were long-time market makers on the CBOE. Many of these individuals owned memberships (seats) and the Exchange believed that these seats should qualify for purposes of compliance with the intent of proposed CBOE Rule 8.85(e)⁵ because these individuals were the primary owners of the DPMs. However, once the Rule was actually in place, a consolidation of DPMs on the trading floor had already taken place (with larger, more national firms operating multiple DPM stations more prevalent on CBOE) and the Exchange observed that some firms were asserting that non-equity employees who were nominally involved in the operation of the DPM and who happened to own seats were "senior principals" of the DPM for purposes of the Rule. This prompted the Exchange to eliminate the senior principal component of the Rule. Unfortunately, by eliminating the senior principal provision, certain DPM

⁴ See Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR-CBOE-2002-18).

⁵ CBOE states that the intent of the Rule is to ensure that DPMs maintain a long-term commitment to the Exchange.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR-CBOE-99-37).