

practices for the key payment and settlement systems outlined in the Interagency Paper.

Specifically, the Commission expects each SRO Market and ECN to apply the following principles in its business continuity planning:

- Each SRO Market and ECN should have a business continuity plan that anticipates the resumption of trading, in the securities traded by that market, no later than the next business day following a wide-scale disruption.⁶ The resilience of the SRO Market or ECN prescribed by such plans should reflect the extent of alternative trading venues for the securities traded by that market, including the number of sole listings on the market, the market share of the market, and the number of sole members or subscribers of the market. Business continuity plans may focus on strengthening the SRO Market's or ECN's own resilience, on backup arrangements with other markets, or both.

- Assuring resumption of trading activities by a market by the next business day generally requires geographic diversity between primary and backup sites.⁷ To be fully resilient, backup sites should not rely on the same infrastructure components (*e.g.*, transportation, telecommunications, water supply, and electric power) used by the primary site, and the operation of such sites should not be impaired by a wide-scale evacuation at or the inaccessibility of staff that service the primary site.

- The SRO Markets also should assure the full resilience of important shared information systems, such as the consolidated market data stream generated for the equity and options markets. The market data collection and dissemination systems, for example, are critical to the functioning of the trading markets because of their reliance on accurate and current pricing information.

- The effectiveness of back-up arrangements in recovering from a wide-scale disruption should be confirmed through testing.

⁶ Consistent with the approach taken in the Interagency Paper, the next-day resumption objective should provide a concrete goal to plan for and test against. This should not be regarded as a hard and fast deadline that must be met in every emergency situation. Various external factors, such as time of day, scope of disruption, and status of critical infrastructure—particularly telecommunications—can affect actual recovery times.

⁷ As in the Interagency Paper, however, the Commission does not believe it is necessary or appropriate to prescribe specific mileage requirements for geographically-dispersed backup sites.

- Each SRO Market and ECN should implement plans reflecting these principles as soon as practicable and strive to do so no later than the end of 2004.

The Commission staff intends to engage in an ongoing and individualized dialogue with each SRO Market and ECN to discuss application of these principles in a manner most appropriate for the particular trading market.

The Commission believes every reasonable effort should be made to assure the prompt and smooth resumption of trading following a wide-scale disruption, and that application of the principles described above is a critical step in achieving that goal. Nevertheless, the Commission notes that, depending on the facts and circumstances of a given event, it may be prudent to defer the reopening of a particular market or markets even if, from a technical standpoint, the resumption of trading is possible. In the case of a disruption of the securities markets, the Commission has a fundamental regulatory interest in assuring the prompt—yet smooth—resumption of trading. Deciding when to reopen the markets will involve an assessment of the operational capabilities of the markets and major market participants, as well as the clearance and settlement system. In a given situation, difficult judgments may be required to strike the appropriate balance between the desire to resume trading as soon as possible, and the practical necessity of waiting long enough to minimize the risk that, when trading resumes, it will be of inferior quality or interrupted by further problems.

Finally, the Commission believes that the establishment of a next-business day resumption goal for the SRO Markets and ECNs should serve as a useful resumption benchmark for securities firms as well. The decision by a broker-dealer to risk capital or provide brokerage services on an ongoing basis is, in essence, a matter of business judgment. Given the competitive nature of the securities business, however, the Commission expects there to be incentives for broker-dealers to be prepared to participate in the markets following a wide-scale disruption as soon as the markets' trading facilities become available.

III. Conclusion

The Commission believes it important for the SRO Markets and ECNs to take concrete steps to strengthen their resilience to address the continuing, serious risks to the U.S. financial system

posed by the post-September 11 environment. To date, the trading markets have made significant progress in increasing the robustness of their business continuity plans. By applying the principles outlined in this Policy Statement, the Commission believes the SRO Markets and ECNs will better assure their own resilience and that of the U.S. financial system. In so doing, they will be promoting one of the paramount objectives of the U.S. securities laws—the maintenance of fair, stable, and orderly markets.

Dated: September 25, 2003.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48529; File No. SR-CBOE-2002-55]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Permanently Approve Its Rapid Opening System

September 24, 2003.

I. Introduction

On September 16, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt its Rapid Opening System ("ROS") on a permanent basis. On February 6, 2003, CBOE submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 14, 2003.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

On February 9, 1999, the Commission approved, on a pilot basis, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jaime Galvan, Attorney II, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation, dated January 17, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48293 (August 6, 2003), 68 FR 48650 ("ROS Notice").