

proposal is similar to the NYSE and Nasdaq's proposals requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq's proposals were published for comment in the **Federal Register** and recently approved by the Commission.²⁴ The Commission believes that it already considered and addressed the issues that may be raised by the Exchange's proposal in its approval of the NYSE and Nasdaq's proposals.²⁵

The Commission believes that accelerated approval of the Exchange's proposal is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans among the markets. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Exchange's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,²⁶ to approve the Exchange's proposal and Amendment No. 1 thereto on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-CBOE-2003-45) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

²⁴ See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. See Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). See Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). See *supra* note 5; see also *supra* note 11.

²⁵ Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Exchange, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. See *supra* note 5; see also *supra* note 11.

²⁶ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²⁷ 15 U.S.C. 78s(b)(2).

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

Jill M. Peterson,

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48721; File No. SR-CBOE-2003-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. To Amend Rule 6.8, Interpretation and Policy .01, Relating to the Retail Automatic Execution System

October 30, 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 October 1, 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 amend CBOE Rule 6.8, Interpretation and Policy .01 to allow broker-dealer orders that are eligible for execution on CBOE's Retail Automatic Execution System ("RAES") to automatically execute against limit orders on the CBOE book in classes designated by the appropriate Floor Procedure Committee. The text of the proposed rule change is set forth below. Proposed new language is in italics.

* * * * *

Rule 6.8 RAES Operations

(a)-(g) No change.

* * * Interpretations and Policies

.01 (a) Notwithstanding Rule 6.8(c)(ii), the appropriate Floor Procedure Committee ("FPC") may determine, by class and/or series to allow the following types of orders to be executed on RAES in accordance with the requirements of Rule 6.8, subject to the

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

conditions set forth below in subparagraphs (b) and (c):

1. Broker-dealer orders; or
2. Broker-dealer orders that are not for the accounts of market-makers or specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to section 7(c)(2) of the Securities Exchange Act of 1934.

(b) The appropriate FPC may permit broker-dealer orders to be automatically executed pursuant to this Interpretation and Policy .01, subject to the following provisions:

1. Broker-dealer orders entered through the Exchange's order routing system will not be automatically executed against orders in the limit order book *unless permitted on a class-by-class basis by the appropriate Floor Procedure Committee*. Broker-dealer orders may interact with orders in the limit order book only after being re-routed to a floor broker for representation in the trading crowd. Broker-dealer orders are not eligible to be placed in the limit order book pursuant to Rule 7.4.

2. The maximum order size eligibility for the broker-dealer orders may be less than the applicable order size eligibility for non-broker-dealer orders.

3. Non-broker-dealer orders may be eligible for automatic execution at the NBBO pursuant to Interpretations and Policies .02 of Rule 6.8, while broker-dealer orders may not be so eligible. In the event broker-dealer orders are not so eligible, they shall instead route to either PAR or BART.

4. The appropriate FPC may determine, by class and/or series, to prohibit access to RAES for broker-dealer orders after 3 pm.

(c) CBOE market-makers must assure that orders for their own accounts are not entered on the Exchange and represented or executed in violation of the following provisions: Interpretations and Policies .02 of Rule 6.55 and Interpretations and Policies .06 of Rule 8.9 (concurrent representation of a joint account), Rule 6.55 (concurrent representation of a market-maker account), and section 9 of the Securities Exchange Act of 1934 (wash sales).

.02-.09 No change.

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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