

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47332; File No. SR-CBOE-2002-69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Broker-Dealer Orders on RAES

February 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted Amendment No. 1 to the proposed rule change on January 21, 2003.³ 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 Exchange proposes to amend its rules regarding broker-dealer access to RAES. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

CBOE proposes to amend Interpretation and Policy .01 of CBOE Rule 6.8 to allow the appropriate Floor Procedure Committee to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m. Currently, the appropriate Floor Procedure Committee may permit broker-dealer orders on RAES during the trading day for options by class and/or series. CBOE proposes to expand access to RAES for broker-dealer orders, but some issues arise from 3 p.m. until the close especially for American style options, which permit early exercise.

Options pricing models used by CBOE members to generate the autoquote on CBOE utilize the price of underlying securities on the appropriate securities exchange.⁴ Once the underlying stock stops trading, there is no price feed from the underlying securities to automatically update the options pricing models. Therefore, the hundreds of options series must be updated manually. If broker-dealer orders are permitted on RAES this could potentially increase the number of automatically executed orders significantly, (especially when a news release occurs after the close of the securities exchanges but before the close of CBOE), which if the increase in orders is significantly large, could create even more difficulties in updating the option pricing models in a timely manner.

Due to the increase in potential orders occurring electronically at a greater speed, CBOE would like to permit RAES access in more classes and/or series for broker-dealer orders, but permit the appropriate floor procedure committee to limit the access in classes or series, where appropriate, to the time period when the exchanges for the underlying securities are open for their regular trading session, *i.e.*, until 3 p.m. The proposed rule change would provide a solution that would permit broker-dealers to have access for the vast majority of the trading, while at the same time minimizing stress to the options pricing models when they are manually updated. CBOE believes that this proposed rule change would provide flexibility, while at the same time permitting increased competition for electronic orders.

⁴ For purposes of this discussion securities exchanges includes NASDAQ.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act⁵ in general and furthers the objectives of section 6(b)(5)⁶ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change would promote competition, remove impediments to and perfect the mechanism to a free and open market by permitting greater competition for electronic order. The proposed rule change would permit broker-dealer orders to have RAES access in more option classes and/or series, and thus promote competition for these orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Jaime Galvan, Attorney, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange changed the Statement of the Terms of Substance of the Proposed Rule Change and the Purpose section of the filing to correctly describe the proposal, and made non-substantive, clarifying changes to the rule text.