

investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative before 30 days from the date on which it was filed, and the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-52 and should be submitted by January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43746; File No. SR-CBOE-00-62]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated to Limit the Meaning of "Public Customer" for Purposes of Determining Who May Use RAES

December 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 28, 2000, the Chicago Board Options Exchange, Incorporated ("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 Exchange. 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 the provisions of CBOE Rule 6.8 (RAES Operations) that govern the eligibility of the owners of certain types of accounts to submit orders through the Exchange's Retail Automatic Execution System ("RAES").<sup>3</sup> The text of the proposed rule change is set forth below. Deleted text is in brackets; new text is in italics.

#### Rule 6.8 RAES Operations

(a)(i) Firms on the Exchange's Order Routing System ("ORS") will automatically be on the Exchange's Retail Automatic Execution System ("RAES") for purposes of routing small public customer market or marketable limit orders into the RAES system. Those orders which are eligible for routing to RAES may be subject to such contingencies as the appropriate Floor Procedure Committee ("FPC") shall approve. Public customer orders are orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, [or ]any non-member broker-dealer (including a foreign broker-dealer as defined in Rule 1.1 (xx)), or member of a futures or securities exchange has an interest. The appropriate Floor

Procedure Committee ("FPC") shall determine the size of orders eligible for entry into RAES in accordance with paragraph (e) of this Rule. For purposes of determining what a small customer order is, a customer's order cannot be split up such that its parts are eligible for entry into RAES. Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their booths on the floor.

\* \* \* \* \*

#### Interpretations and Policies

\* \* \* \* \*

.12 For purposes of this rule (or Rule 6.8(a)(i)), members, non-member participants in a joint venture with a member, non-member broker dealers, and members of a futures or securities exchange are deemed to have an interest in accounts held by the following:

1. Spouses of, or family members living in the same household with: CBOE members, non-member participants in a joint venture with a member, non-member broker dealers, or members of a futures or securities exchange.

2. (a) An affiliate that holds a 5% or more interest in the CBOE member, non-member participant in a joint venture with a member, non-member broker-dealer, or member of a futures or securities exchange; (b) Spouses of, or family members living in the same household with, any affiliate as defined in this rule.

#### 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. 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 its rule governing the eligibility of the owners of certain types of accounts to submit orders through the Exchange's RAES system by: (i) interpreting the term

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

“interest,” and (ii) providing that members of futures exchanges are not considered “public customers” for purposes of the rule.

CBOE has stated that the RAES system provides a mechanism whereby public customers can receive automatic execution of their small market or marketable limit orders<sup>4</sup> at the National Best Bid or Offer (“NBBO”).<sup>5</sup> For the purposes of determining who is eligible to submit orders through RAES, Rule 6.8(a)(i) defines “public customer orders” as: Orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including a foreign broker-dealer as defined in Rule 1.1(xx)) has an interest.

Accordingly, any account in which a CBOE member or non-member participant in a joint venture with a CBOE member, or any non-member broker-dealer has an interest would not be deemed to be an eligible account for purposes of submitting RAES orders. A problem arises, however, in trying to determine what constitutes an “interest.” The Exchange has received numerous requests to provide interpretive advice with respect to whether certain individuals, who by nature of their relationship to persons who clearly are not public customers, are permitted to trade on RAES. For instance, there have been several inquiries as to whether the spouse or a relative of a CBOE member can trade for his or her own account through RAES. This proposal, therefore, aims to clarify the Exchange’s position regarding the ability of several types of accounts to access RAES in order to receive automatic execution of their options orders.

#### *Proposed Change*

First, CBOE proposes to amend Rule 6.8(a)(i) to prohibit members (or affiliates of members) of any futures exchange from trading on RAES.<sup>6</sup>

<sup>4</sup> Currently, RAES permits orders for up to 75 contracts (in all classes for which a greater maximum is not expressly provided for in the rules). Options subject to the 75-contract maximum include all classes of equity options and all classes of sector index options. Options on the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, and the High Yield Select Ten, as well as interest rate options, currently are subject to a 100-contract limit.

<sup>5</sup> The Commission notes, however, that a consolidated NBBO does not currently exist for the options markets. Instead, each options exchange separately calculates the best bid or offer for reach multiply traded options class. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023, 48024 n.22 (August 4, 2000).

<sup>6</sup> This proposal also excludes members of any securities exchange from trading on RAES. This

CBOE’s rule currently prevents any broker-dealer (whether a member of CBOE or a non-member) from submitting trades through RAES because these entities clearly are not public customers. CBOE believes that a member of a futures exchange is the functional equivalent of a securities broker and, in many instances, may be affiliated with a broker-dealer. If there is an affiliate relationship, this proposal (as discussed below) would prohibit these affiliates from trading on RAES. In the instance, however, where a member of a futures exchange is not affiliated with a securities broker-dealer, the Exchange nevertheless believes it is reasonable to prohibit the futures exchange member from trading on RAES. The Exchange notes that there is a strong interrelationship between the futures and securities markets. Futures, futures options, and stock options overlie many of the same indices and, in fact, may be used to hedge each other or to exploit an arbitrage opportunity. Given the specialized knowledge of the member of the futures exchange, CBOE does not believe it would be reasonable to classify this entity as a “public customer.” For purposes of this rule, CBOE proposes to define “affiliate” as a person or entity that holds a 5 percent or more interest in the member of the futures exchange.

Next, the Exchange proposes to add new Interpretation .12<sup>7</sup> to enumerate two categories of accounts in which CBOE members are deemed to have an interest.<sup>8</sup> The first category addresses the status of relatives of CBOE members. The proposal would clarify that a CBOE member is deemed to have an interest in any account maintained by the spouse of, or family members living in the same household with, that CBOE member. The Exchange notes that this prohibition is designed to prevent a CBOE member from trading on RAES by opening an account for a family member and submitting orders through that account. This prohibition applies regardless of whether the account is

exclusion is intended to apply specifically to those individuals or entities that have a securities exchange membership but who are not registered as broker-dealers.

<sup>7</sup> The text of the notice prepared by the Exchange inadvertently referred to the proposed interpretation here as Interpretation .11. If approved by the Commission, the proposed Interpretation would, in fact, become Interpretation .12. Telephone conversation between Steve Youhn, Attorney, CBOE, and Michael Gaw, Attorney-Adviser, Division of Market Regulation, Commission, on November 30, 2000.

<sup>8</sup> For simplification, the Exchange uses the term “CBOE member” to refer to CBOE members, non-member participants in a joint venture with a member, non-member broker dealers, and members of a futures or securities exchange.

jointly or individually titled or owned. In this instance, because the parties share the same household and are ostensibly one economic unit, it can reasonably be inferred that the proceeds from the trading account would inure to all individuals in the household. Furthermore, without this prohibition, it would be easy for a CBOE member to frustrate the purpose of the prohibition. For these reasons, the Exchange believes it is reasonable to impose a RAES-access trading restriction on relatives of CBOE members.

The second category applies to affiliates of CBOE members. Specifically, CBOE members are deemed to have an interest in any account maintained by an affiliate of a CBOE member. The Exchange believes it is necessary to place a restriction on affiliates by virtue of their relationship to CBOE members. In many instances, the affiliate will be an entity that either owns, or is owned by, the CBOE member. Given the relationship of the two entities and the fact that one may exert control over the other, CBOE believes it is proper to impose a prohibition on RAES trading by the affiliate of the CBOE member. In other instances, the affiliate may be a business partner of the CBOE member. In these situations, the two parties will share a common economic bond with respect to the operation of their business venture. Accordingly, CBOE believes it is reasonable to prevent the affiliate from trading on RAES. If the affiliate is an individual, the Exchange notes that the prohibition against RAES trading also extends to spouses and/or family members living in the same household as the affiliate. For purposes of this rule, the exchange defines an affiliate as a person or entity that holds a 5 percent or more interest in the CBOE member, non-member participant in a joint venture with a member, non-member broker-dealer, or member of a futures or securities exchange.

CBOE has asserted that the rules of all of the floor-based options exchanges, which have been approved by the Commission, limit access to their automatic execution systems either to the accounts of public customers or to non-broker-dealer accounts.<sup>9</sup> Given this limitation, the Exchange finds it necessary to provide interpretive guidance to clarify the types of accounts that it does not believe are eligible to submit orders through RAES. The clarifications provided in this proposed

<sup>9</sup> See, e.g., PCX Rule 6.87(a) (only non-broker-dealer customer orders are eligible for execution on exchange’s Automatic Execution System); Amex Rule 933(a) (same).

rule change serve to ensure that RAES will continue to be for use by public customers for the automatic execution of their small market or marketable limit orders. The proposal also makes clear that certain other types of accounts will not be eligible to submit trades through RAES. The Exchange notes, however, that nothing would prevent the owners of these accounts from sending their orders to the floor for manual execution where they would receive firm quote treatment and execution at the NBBO.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and in general to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulation 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 the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with 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 Exchange 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 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 CBOE. All submissions should refer to File No. SR-CBOE-00-62 and should be submitted by January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43744; File No. SR-CBOE-00-64]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees**

December 19, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 2000, 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 Exchange. 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 make a change to its fee schedule related to options on the CBOE Mini-NDX. The test of the proposed rule change is available at the CBOE and 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, the 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 29, 2000, the Commission approved the Exchange's proposed rule change to waive all customer fees for options on the CBOE Mini-NDX ("MNX<sup>SM</sup>").<sup>3</sup> The Exchange decided to waive these customer fees to promote the launch of the MNX product, which started trading on August 14, 2000. The purpose of the proposed rule change is to reinstate all customer fees relating to public customer MNX options orders effective on December 1, 2000.<sup>4</sup>

Specifically, the Exchange proposes to reinstate the transaction fee, trade match fee, floor brokerage fee and RAES fee for public customer MNX options orders. These customer fees will revert to the standard rates that currently apply to public customer orders for all other Exchange index options. The Exchange believes the customer fee waivers served the purposes of promoting a successful launch of the MNX product while generating significant savings for its

<sup>3</sup> See Securities Exchange Act Release No. 43221 (August 29, 2000), 65 FR 54333 (September 7, 2000). The Commission approved the trading of options on the CBOE Mini-NDX on June 30, 2000. See Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000).

<sup>4</sup> These "customer fees" are actually those fees assessed on Exchange members relating to public customer MNX options orders executed by such members. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission, on December 19, 2000.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.